

APR 20 1984

No. \_\_\_\_\_

ALEXANDER L. STEVAS.

CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

STATE OF MISSOURI, *et al.*,  
*Petitioners,*  
 v.

CRATON LIDDELL, *et al.*,  
*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
 UNITED STATES COURT OF APPEALS  
 FOR THE EIGHTH CIRCUIT**

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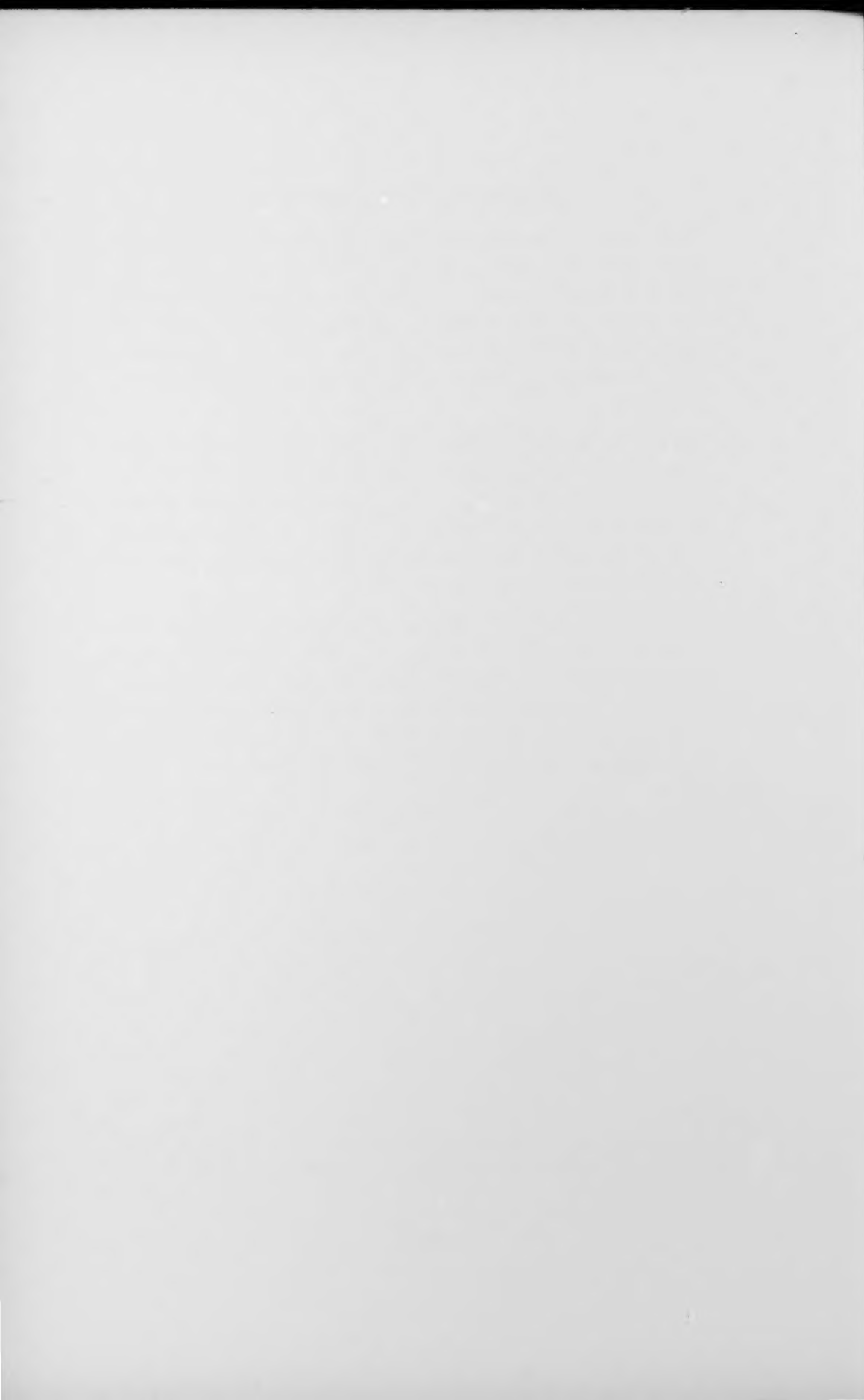


## QUESTIONS PRESENTED

1. Whether, under *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), a federal court may require a state to fund a Settlement Agreement drafted by other parties without making findings that the provisions of the Agreement are necessary to remedy the incremental effects of a prior constitutional violation.
2. Whether, under *Milliken v. Bradley*, 418 U.S. 717 (1974), a federal court may require a state to implement a multi-district remedy for segregation within a single district in order to achieve a racial balance not afforded by the population of students in the district where the violation occurred.
3. Whether, under *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1972), a federal court may require a state to provide one school district with new programs and facilities in order to meet a voluntary state standard that is not met by numerous other school districts throughout the state.

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\* A complete list of parties to the proceeding is contained in the caption to the opinion of the court of appeals. Pet. App. 1a-13a.



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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

\_\_\_\_\_  
The State of Missouri, and certain of its agencies and officials, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

**OPINIONS BELOW**

The opinion of the court of appeals is not yet reported. The opinion is reprinted as Appendix A in the separate appendix to this petition. The Memorandum Opinion of the district court is reprinted at 567 F. Supp. 1037. It is reprinted as Appendix B in the separate appendix to the petition.

**JURISDICTION**

The judgment of the court of appeals *en banc* was entered on February 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**STATEMENT**

This case involves an order, drafted by other parties as a settlement plan, requiring the State of Missouri to pay

for the transfer of students throughout 24 independent school districts in the St. Louis metropolitan area and to rebuild schools and revamp programs within the St. Louis school district itself. The cost of the plan has been conservatively estimated at between \$50 and \$80 million per year. A divided Court of Appeals for the Eighth Circuit, sitting *en banc*, affirmed the order with minor modifications.

This case, like many cases involving state programs, has had a long history. Although that history is set out in some detail in the court of appeals' opinion, Pet. App. 15a-21a, a brief review is necessary to understand the order at issue in this petition.

1. *The Intradistrict Stage.* The boundaries of the St. Louis school district, which were established in 1876, are identical to the City boundaries. Until 1954 the St. Louis schools were segregated pursuant to state law.<sup>1</sup> In 1972 plaintiffs filed this action on behalf of black students in the city schools charging that the Board of Education of the City of St. Louis (the "City Board") had "effected and perpetuated racial segregation and discrimination" in its schools. Pet. App. 136a. Neither the State of Missouri nor any of its officials were named as defendants.

The case was finally tried in 1977 with an expanded list of plaintiffs and defendants, including the State of Missouri and certain of its agencies and officials as defendants. After a lengthy trial, the district court denied plaintiffs any relief, holding that resort by the City Board to a neighborhood school policy, after the decision in *Brown*, had eliminated segregation in the city schools. *Liddell v. Board of Education*, 469 F. Supp. 1304 (E.D. Mo. 1979). Although the court recognized that St. Louis had numerous all-black or largely all-black schools, it

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<sup>1</sup> Immediately after the decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), the Missouri Attorney General held that the law was unenforceable. See Op. No. 96 to Hubert Wheeler, June 30, 1954.



noted that after 1954 the white population in the City had substantially decreased while the black population had taken the opposite course, resulting in a school system with approximately three black students for every white student. *Id.* at 1318-1323. The court also found that, while the State of Missouri had required segregation by law until 1954, it had "effectively removed all barriers at the state level to the desegregation of the schools" *Id.* at 1314.

The Eighth Circuit, sitting *en banc*, reversed. *Adams v. United States*, 620 F.2d 1277 (1980). The court of appeals held that the neighborhood school policy adopted by the City Board "had very little, if any, effect on the dual school system in the City." *Id.* at 1284. While noting that "the district-wide percentage of black students had increased to 75.5%," the court pointed out that 14 of the 119 regular elementary and secondary schools were "90% or more white," leaving 78 of the schools "90% or more black." *Id.* at 1285. The court found that this result was "inevitable and unquestionably foreseeable: \* \* \* the black schools remained predominantly black and the white schools remained predominantly white, with very few exceptions." *Id.* at 1287. After also reviewing particular acts of the City Board, taken after 1954 to preserve segregation, the court concluded: "We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation." *Id.* at 1291.

2. *The Interdistrict Stage.* Although the court of appeals talked in terms of a "system-wide remedy," it sought, from the very first, to expand the remedy to include other independent school systems in the metropolitan area. See 620 F.2d at 1295-97. On remand, therefore, the district court not only implemented a plan for moving students among the city schools but also ordered the State and the City Board (as well as the United States) to explore the possibility of a cooperative

interdistrict remedy. *Liddell v. Board of Education*, 491 F. Supp. 351, 353 (E.D. Mo. 1980).<sup>2</sup> At the same time, the City Board essentially switched sides, filing a new complaint (along with suburban students and two of the earlier plaintiff groups) against the State and certain of the independent suburban school districts. That complaint sought to impose mandatory interdistrict relief, in particular the transportation of pupils throughout the metropolitan area.<sup>3</sup> Pet. App. 138a-141a.

Faced now with both the so-called voluntary interdistrict plan under paragraph 12(c) and the complaint for involuntary interdistrict relief filed by the City Board and plaintiffs, the court ordered that the two proceedings be severed and that the 12(c) stage go forward first.<sup>4</sup> The court then reversed its field, however, turning

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<sup>2</sup> The order was in two primary parts. The first (paragraph 12(a)) was "[t]o make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop \* \* \* a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis \* \* \*." The second (paragraph 12(c)) was "[t]o develop and submit to the Court \* \* \* a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County" (emphasis added). See 491 F. Supp. at 353. This order suggested a curious change in focus since no trial regarding conditions in St. Louis County (i.e., the suburbs surrounding the city) had ever been held.

<sup>3</sup> The court of appeals affirmed the May 21, 1980 order of the district court with the component paragraphs 12(a) and 12(c). *Liddell v. Board of Education*, 667 F.2d 643 (1981), *cert. denied*, 454 U.S. 1081, 1091 (1982). With regard to paragraph 12(a), the court found no impermissible degree of compulsion against the State, observing: "Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up." *Id.* at 651. The court also found that the "suggested" plan of paragraph 12(c) was acceptable "to the extent any such segregation was imposed by the State or other defendants \* \* \*." *Id.* at 651.

<sup>4</sup> The court of appeals declined to review the propriety of the severance order, holding that it was not appealable on an inter-

its attention to the suit for mandatory interdistrict relief. Following an unusual procedure, the court first disclosed the remedy that it would impose *if* liability were found: dissolution of all the independent school districts and the creation of a single unified metropolitan school district with a uniform tax rate. Pet. App. 19a. The court then scheduled hearings on the question whether any interdistrict violation had in fact occurred.

Those hearings were never held. Faced with the prospect of one large district instead of separate autonomous ones, the City Board, the suburban school boards, and the plaintiffs entered into a settlement agreement that, by its terms, was intended "to settle the litigation regarding paragraph 12(c) *and the plaintiffs' interdistrict claims*" (emphasis added). See Appendix D, Pet. App. 149a-232a. The Agreement called for busing more than 15,000 students from city to suburbs, suburbs to city, and suburb to suburb, Pet. App. 152a-153a; 159a-173a, as well as expanded magnet schools in the city to attract suburban students and new magnet schools in the suburbs. Pet. App. 153a-154a; 173a-183a. The Agreement also contemplated substantial changes to improve "the quality of education throughout the [city schools] \* \* \*." Pet. App. 154a-155a; 183a-203a. In addition to the provisions aimed specifically at "non-integrated schools," Pet. App. 197a-200a, the Agreement set a city-wide pupil-to-teacher ratio of 25:1 (20:1 in "non-integrated schools"), Pet. App. 185a, and provided for "all day kindergarten programs," Pet. App. 190a, "the res-

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locutory basis. *Liddell v. Board of Education*, 677 F.2d 626, 629 (8th Cir.), *cert. denied*, 103 S. Ct. 172 (1982). The court noted that "we are being asked not to rule on a specific plan but to anticipate what the district court may have in mind and to instruct it as to what it can or cannot do." *Id.* at 641. The court, however, did uphold an order requiring the State to fund limited transfers under paragraph 12(a). The sole basis given was that "the state had substantially contributed to the segregation of the public schools of the City of St. Louis." *Id.* at 629.

toration of such specialized staff as art, music and physical education teachers," *ibid.*, coaches for athletic teams, "nurses, social workers, psychologists and psychological examiners," *ibid.*, preschool centers, Pet. App. 191a, library and media services, Pet. App. 191a-192a, audio-visual services, and so forth. The Agreement also included extensive capital improvements throughout the city school system as part of an effort "to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process." Pet. App. 195a. The Agreement provided for, and was expressly contingent upon, an order from the district court requiring the State, which was not a party to the Agreement, to pay for most of it. Pet. App. 223a-226a.

3. *The Decisions Below.* Although the only finding of liability against the State was that it had once required segregation of students within the city schools, the district court ordered the State to fund all of the inter-district transfers, all of the magnet schools, one-half of the "quality education" components, and one-half of the capital improvements (in whatever amount selected by the City Board). Pet. App. 96a-97a. In so doing, the court did not inquire into, or make any findings about, either the liability of the State on "plaintiffs' interdistrict claims" or the relationship between these programs and segregation in the city schools themselves. Rather, the court undertook only to decide "whether [the] proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of the case," Pet. App. 102a, 108a, the inquiry required under Rule 23, Fed. R. Civ. P., to determine whether the settlement of a class action should be approved. Having found the Plan sufficient for the class members, the court imposed the Plan on the State, saying that it had the power to do so because the State "has already been adjudicated a primary constitutional violator in causing school segregation in the City of St. Louis \* \* \*." Pet. App. 129a.

The court expressly held that it was required to approve the Settlement Plan *without alteration* "except insofar as the Court finds technical, perfecting, and non-substantive changes necessary and reasonable." Pet. App. 119a.<sup>5</sup>

The Eighth Circuit, sitting *en banc*, affirmed most of the order by a divided vote. Pet. App. 1a-94a. Saying that "[t]his Court has repeatedly authorized the interdistrict transfer of students as a fundamental element of an effective remedy for the unconstitutional segregation of the city schools," Pet. App. 25a, the court first decided that the part of the order contemplating busing was law of the case. Pet. App. 25a-30a. The court went on to find that the interdistrict transfers were constitutionally permissible in light of its concern that "[t]he potential for integration within the district \* \* \* was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would probably result." Pet. App. 32; see *id.* at 30a-36a. The court noted that the remedy "returns the largest number of victims to integrated schools \* \* \*." Pet. App. 34a.<sup>6</sup>

The court also affirmed most of the order regarding quality education and the rebuilding of the city schools. Pet. App. 45a-59a. In reviewing the quality education

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<sup>5</sup> The part of the Plan pertaining to quality education was amended by the plaintiffs and City Board before its submission to the court. The amended Plan is set forth as Appendix E in the separate appendix to this petition.

<sup>6</sup> As part of the interdistrict remedy, the court approved magnet schools throughout the City with "twelve to fourteen thousand [students] to be enrolled in city magnets." Pet. App. 39a. The purpose of the magnets was to be "attracting suburban white students; only those schools which demonstrate such a probability should be approved." Pet. App. 43a.



program, however, it relied upon a standard unmentioned by the district court, affirming "those programs necessary to permit the city schools to regain, and then retain, their class AAA status." Pet. App. 54a.<sup>7</sup> While expressing some doubt about what the standard covered, the court mentioned specifically library and media services, audio-visual services, lower class size, and restoration of art, music, and physical education. Pet. App. 56a. The court also approved the requirement of preschool centers, planning and program development, all-day kindergartens, parental involvement, desegregation planning, long-range planning, and public affairs. Pet. App. 54a-56a. With regard to the extensive capital rebuilding program, the court simply concluded that "[t]he district court did not err in holding that the State had an obligation to pay one-half of the costs of the capital improvement program necessary to restore the city facilities to a constitutionally acceptable level." Pet. App. 58a-59a. It did not indicate what that level might be.<sup>8</sup>

Judge Gibson dissented from affirmance of the inter-district plans and the rebuilding programs. Pet. App. 73a-86a. Pointing out that "the nature of the constitutional violation by the State of Missouri has been outlined only most generally," Pet. App. 73a, he discussed in some detail just what constitutional violation had actually been proved in this case, noting: "[t]he con-

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<sup>7</sup> The Missouri Department of Elementary and Secondary Education designates each school system as AAA, AA, or unclassified according to its own criteria. A change in status has no effect on state funding.

<sup>8</sup> The court declined to approve new magnet schools in the suburbs and suburb-to-suburb transfers, saying that the latter were "not geared to remedy the violation found within the City." Pet. App. 38a-39a, 43a-44a. When the State sought to have the suburbs assume the cost of the transfers, however, the court of appeals, despite its holding, ordered the State to continue paying all of the costs during this school year and an unspecified share of costs after that. Order of March 5, 1984. Four judges dissented.

stitutional violation found on the part of the State and the City of St. Louis is failure to take necessary actions to desegregate the schools in the City of St. Louis and particularly to desegregate the schools on a system-wide basis, including the predominantly white schools in south St. Louis and the predominantly black schools in north St. Louis." Pet. App. 76a. Because "[t]here is no hint of a finding that there was an interdistrict effect flowing from this intradistrict violation," Pet. App. 79a, Judge Gibson concluded that "the intradistrict violations found are insufficient to require the interdistrict remedy agreed to by all of the parties except the State of Missouri, and to impose the cost of this remedy on the State of Missouri." Pet. App. 79a. Similarly, with regard to the rebuilding program, he observed: "There is no finding in the district court order and no conclusion by this court that the condition of the physical plant of the St. Louis schools is related in any way to the constitutional violations of either the City Board or the State." Pet. App. 84a.<sup>9</sup>

Judge Bowman, while agreeing with Judge Gibson on these points, dissented on the issue of quality education as well. Pet. App. 87a-94a. Judge Bowman noted the lack of findings on this issue, saying that "[b]ecause of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation." Pet. App. 88a n. 1. Relying on the decision in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), he pointed out that the district court had made no effort "to determine the incremental segregative effects of the Constitutional violation committed by the defendants or

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<sup>9</sup> Finding any defects to be "purely and simply the result of the neglect of the City Board to fulfill its responsibilities," Judge Gibson concluded that "[t]o order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found \* \* \*." Pet. App. 84a.

to compare the present City school population to what it would have been absent a violation." Pet. App. 91a. He also noted that the court had engaged in "no tailoring of the order to redress only 'that difference' referred to in *Dayton* or to restore students in the City schools 'to the position they would have occupied in the absence of such conduct' as required by *Milliken* [*v. Bradley*, 433 U.S. 267 (1977) (*Milliken* II)]." Pet. App. 91a.<sup>10</sup>

### REASONS FOR GRANTING THE WRIT

This case involves an unprecedented order. In the 30 years since *Brown v. Board of Education*, 347 U.S. 483 (1954) (*Brown* I) was decided, no State has ever been faced with a federal order requiring it to transport more than 15,000 students throughout 24 independent school districts in a metropolitan area, to pay for one local school system to meet voluntary state standards of education not met by many other school systems throughout the State, and to support an open-ended rebuilding program for local schools. Yet the courts below have imposed just such obligations on the State of Missouri at an estimated cost of more than \$500 million in the next ten years. To make matters worse, the courts reached that result "by a process that can only be described as brute force." *Levy v. Louisiana*, 391 U.S. 68, 76 (1968) (Harlan, J., dissenting).

This case merits review for several reasons. To begin with, although this Court has said that remedial orders should be supported by proper findings about the "incremental effect" of any constitutional violation, *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 420

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<sup>10</sup> Judge Bowman stressed the particular need for proper fact-finding in this case, in light of the effort to impose a settlement agreement in the form of a court order, saying: "[I]t would be a most remarkable coincidence if a plan intended to settle the broad interdistrict claims in this case was at the same time properly tailored to cure only the effects of the intra-district violation." Pet. App. 92a.



(1977) (*Dayton I*), the district court ignored, and the court of appeals expressly renounced, that requirement. Pet. App. 32a. The order thus is not the product of hearings in the district court to identify incremental effects or, indeed, of any effort by the court to mark out constitutional boundaries. Rather, the plan was drafted as a settlement by the plaintiffs and local school boards, expressly made contingent on enforced funding to be ordered by the district court, and then imposed by the court on the State in bulk with no real hearing and only a few sentences of conclusory analysis. For that procedure to produce a properly tailored order would be a judicial miracle.

Quite apart from its procedural origins, however, the remedy is intolerable. The extensive busing, for example, is not meant to reverse the separation of black and white students in the city schools but to achieve a racial balance not available within the city schools themselves. This Court has made quite clear, however, that a unitary school system need not have any particular degree of racial balance. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*). Furthermore, the courts below showed no hesitation about requiring a 24-system remedy for a single system violation. That requirement not only is inconsistent with *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*), since there is no evidence of any violation or impact beyond the city system, but is inconsistent with every major school case in the past three decades. *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown II*); *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*; *Milliken I supra*; *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) (*Dayton II*); *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). Finally, the bloated quality education and rebuilding program flies in the face of holdings that the Constitution does not guarantee a right to public education at all, much less a right "to develop to the

limit of [each student's] ability," Pet. App. 134a, or to attend AAA schools. Pet. App. 44a. See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1972).

1. *The Order was Imposed Without Proper Findings.* Although the terms of the order by themselves warrant review by this Court, see pages 16-28, *infra*, the process by which they were imposed on the State is, in many respects, even more important and troubling. For, despite the extraordinary scope of the order, the district court took it lock, stock, and barrel from a settlement plan drafted by some of the parties and funded it, as those parties had intended, from the State treasury. Indeed, as if to emphasize the lack of judicial inquiry, the court expressly held that it had no power to alter the Settlement Plan except for "technical, perfecting, and non-substantive changes \* \* \*." Pet. App. 119a.

It is hard to imagine a procedure less likely to produce a properly refined remedy. The framing of remedies in all constitutional cases depends on, first, an accurate definition of the rights at issue and, second, an appreciation of the limits of equitable power. This Court has recognized on many occasions that a district court has considerable discretion in devising appropriate remedies. See, e.g., *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*; *Milliken II*, *supra*. At the same time, however, the Court has emphasized that such discretion must be exercised within the limitations derived from substantive law. See *Milliken II*, *supra*, 433 U.S. at 281; *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 16. See also *Oliver v. Kalamazoo Board of Education*, 706 F.2d 757 (6th Cir. 1983). The rule has thus been established that federal equitable powers "[can] be exercised only on the basis of a violation of the law and [can] extend no farther than required by the nature and extent of that violation." *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 399 (1982).

If these principles are to mean anything, federal judges, faced with the need to draw a constitutional line, must inquire into and then explain why the line is drawn in a particular place. Unless a court gives some content to the rights at issue, and identifies the relationship between those rights and the chosen remedy, it is mere guesswork to determine whether a remedy is no broader than the violation or whether the court has confused a social goal, such as better programs or better schools, with a constitutional requirement. Thus, this Court has stated that "the case for displacement of the local authorities by a federal court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles." *Dayton I*, *supra*, 433 U.S. at 410. Or, as the Court said in *Milliken II*, *supra*, "[t]he well-settled principle that the nature and scope of the remedy are to be determined by the violation means simply that federal court decrees must directly address and relate to the constitutional violation itself." 433 U.S. at 281-82.<sup>11</sup>

The proper inquiry, in our view, requires a district court to identify the "incremental effect" of the constitutional violation, i.e., the conditions caused by the violation rather than by other neutral factors. See *Dayton I*, *supra*, 433 U.S. at 420. Although the Eighth Circuit held that such findings are unnecessary in cases involving more than "isolated instances of discrimination," Pet. App. 32a n. 10, we think that analysis confuses the process with the result. The existence of broader discrimination naturally may support the imposition of a broader remedy, see page 23, *infra*, but the extent of the violation does not relieve the federal courts of the obligation to identify the existing conditions ac-

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<sup>11</sup> Individual Justices have also noted the importance of proper findings. See *Estes v. Metropolitan Branch, Dallas NAACP*, 444 U.S. 437 (1980) (Powell, J. dissenting); *Cleveland Board of Education v. Reed*, 445 U.S. 935 (1980) (Rehnquist, J., dissenting).

tually caused by the violation. See *Washington v. Davis*, 426 U.S. 229, 240 (1976) (“[t]he essential element of *de jure* segregation is a current condition of segregation *resulting from intentional state action*” (emphasis added) (internal quotes omitted)). Because “federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation,” *Milliken II*, *supra*, 433 U.S. at 282, the courts must determine in *every* constitutional case which conditions flow from a constitutional violation and which do not. In school cases, for example, it is obvious that the racial composition of the schools and the level of education are affected by many factors other than governmental decisions about where to assign pupils, including choices made by families about housing, by taxpayers about bond issues or rate hikes, by parents about private schooling, and so forth. While a court may not be able to isolate these elements with mathematical precision, neither can it just assume that every shortcoming in a local school system is the result of unconstitutional state action. Proper findings are the means of sorting out what caused what.

The need for a well-defined inquiry was especially compelling in this case. For the order against the State is not an order at all in the usual sense: it is a settlement plan imposed by judicial force on a nonsettling party.<sup>12</sup> Furthermore, the Plan was drafted to settle not only the case involving the St. Louis district but a new and much broader case, brought in part by students in the independent suburban districts, on which no trial had even been held. Pet. App. 109a-113a. While these circumstances should have alerted the court to make an especially close scrutiny of its constitutional basis, and

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<sup>12</sup> The order leaves little doubt about its origins. Paragraph 2 of the order decrees that “[t]he *Settlement Plan* \* \* \* shall be implemented as of this date for the 1983-1984 school year, and all signatories, as well as State defendants, are required to comply with all the provisions thereof.” Pet. App. 95a.

to make sure that the parties were not simply foisting their own views onto the State, the court limited itself to a hearing under Rule 23 to see whether it was fair to the plaintiffs (including the suburban plaintiffs), Pet. App. 108a, and then adopted the Plan without any substantive changes at all. As Judge Bowman correctly noted in his dissent, "[b]ecause of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation." Pet. App. 88a n. 1.<sup>13</sup>

"The development of the law concerning school desegregation has not reduced the need for sound factfinding by the district courts \* \* \*." *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 470 (Stewart, J., concurring in result). See also Rule 52, Fed. R. Civ. P. This Court, at least twice before, has remanded school cases for findings. See *School District of Omaha v. United States*, 433 U.S. 667 (1977); *Brennan v. Armstrong*, 433 U.S. 672 (1977). Similarly, the First Circuit has recently required a district court to provide proper "findings indicating specifically why and in what respect the order is necessary and appropriate to achieve valid desegregation goals as yet unfulfilled." *Morgan v. McKeigue*, 726 F.2d 33, 35 (1984). Noting that "[i]t is not self-evident from the facts immediately before us that an order of this character is a lawful exercise of the courts' desegregation powers," the court stated: "Both the School Committee and this court are entitled

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<sup>13</sup> A plurality of the Fifth Circuit has observed: "While it is well and very well to extoll the virtues of concluding \* \* \* litigation by consent \* \* \*, we think it quite another [matter] to approve ramming a settlement between two consenting parties down the throat of a third and protesting one, leaving it bound without trial to an agreement to which it did not subscribe." *United States v. City of Miami*, 664 F.2d 435, 451 (5th Cir. 1981) (*en banc*) (Gee, J. for 11 judges). The order here, adopting the Settlement Plan and then making the State bear most of its cost, has precisely that effect.



to a clear statement of the district court's reasoning and the factual basis for the order." *Ibid.* The State of Missouri, faced with a more than half-billion dollar order, deserves no less.

2. *The Remedy Is Unrelated to Any Proven Violation.* It is not surprising that, in light of the process by which it emerged, the order in this case is wrong both in kind and in degree. Although the only violation ever found in this case was the segregation of white and black students within one district, the remedy involves more than 20 other independent districts unaffected by the violation and revamps buildings and programs throughout the City at state expense. In our view, the order not only misapprehends the constitutional rights at issue but also the scope of any allowable remedy.

a. *The Multi-district Remedy.* It is important to any understanding of this case to note that, unlike many school cases previously before this Court, it involves an urban school system that has a racially unbalanced school population. The St. Louis school district has four black students (80%) for every white student (20%). Pet. App. 32a.<sup>14</sup> Segregated by law until 1954, the district was found in 1980 to retain vestiges of that segregation, particularly in the fact that, despite the racial population of the district, several of its schools were almost totally white. *Adams v. United States*, *supra*, 620 F.2d at 1285; see also Pet. App. 73a-76a. There is no dispute over the duty to eliminate the segregation of students within the St. Louis school district. What the State does dispute, and what is at issue here, is the duty to go beyond the district to achieve a racial balance unavailable within the district itself.

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<sup>14</sup> It would thus be perfectly natural, indeed unavoidable, in St. Louis to have schools with a predominantly black student body. That fact distinguishes this case from cases like those in Dayton and Columbus where many predominantly black schools existed despite district-wide percentages of black students of 43% and 32% respectively. See *Dayton II*, *supra*, 443 U.S. at 529; *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 452.

Our position, simply put, is that the federal courts cannot require the State to transport students among districts in order to achieve a racial balance unavailable within the district where the violation occurred. As this Court said in *Milliken I*, *supra*, "[t]he constitutional right of the [black plaintiffs] is to attend a unitary school system *in that district*." *Id.* at 746 (emphasis added). In turn, a unitary school system has always been understood to be one "in which racial discrimination [has been] eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 438 (1968); see also *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 458 (duty to "effectuate a transition to a racially nondiscriminatory school system," quoting *Brown II*, *supra*, 349 U.S. at 301). The Seventh Circuit has thus noted that a unitary school system can be achieved, by definition, within a single district from which the vestiges of prior segregation have been purged. See *United States v. Board of School Commissioners of the City of Indianapolis*, 677 F.2d 1185, 1187 (1982).

The courts in this case did far more than order the State to provide a unitary school system in St. Louis. Upholding a remedy that included numerous other separate school districts, the court openly expressed its concern over the racial composition of the St. Louis district, noting: "The potential for integration within the [St. Louis] district \* \* \* was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would result." Pet. App. 32a. But it is one thing to note this condition as a matter of fact, quite another to order the State to correct it as though it were the result of a constitutional violation. Neither the district court nor the court of appeals made any determination that this racial distribution was caused by the earlier state law, nor do we think that they could have done so. It is unquestioned that

the district lines have been unchanged since 1876, negating any inference that the lines among the various districts were drawn with a discriminatory purpose. See 469 F. Supp. at 1313. Furthermore, the record contains no evidence that the *de jure* policy caused more black students to live in St. Louis or more white students to live in the suburbs. Indeed, to the extent any evidence in the record has been developed, it would seem to show just the opposite.<sup>15</sup>

While it is true that a unitary school system in St. Louis will have many largely black schools, that condition occurs as a natural consequence of the racial composition of the district, not as the result of invidious discrimination by the State. This Court has explicitly warned against "equating racial imbalance with a constitutional violation calling for a remedy." *Milliken I, supra*, 418 U.S. at 741 n. 19. Although a State may not compel segregation, or sit by as the effects of past segregation outlive the compulsion, it has no constitutional duty to create integration where, *without regard to any prior violation*, it would not have otherwise existed. "[T]he Court has consistently held that the Constitution is not violated by racial imbalance in the schools, without more." *Milliken II, supra*, 433 U.S. at 280 n. 14. "An order contemplating the 'substantive constitutional right [to a] particular degree of racial balance or mixing' is therefore infirm as a matter of law." *Ibid.*<sup>16</sup>

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<sup>15</sup> In 1954, when *Brown I* was decided, the number of white students in the city schools outnumbered black students by a ratio of almost two to one; by the 1978-79 school year, the number of black students had risen from 30,880 to 54,584, while the number of white students had fallen from 58,595 to 18,638. *Liddell v. Board of Education, supra*, 469 F. Supp. at 1314, 1329. These figures, if they have anything to do with school policies at all, are more indicative of "white flight" from an integrated school system, than of continuing effects from a segregated one.

<sup>16</sup> The Sixth Circuit has observed that "[a] school district has no affirmative obligation to achieve a balance of the races in the schools when the existing imbalance is not attributable to school



In their effort to integrate students from the city and suburbs, the courts below thus ran afoul of their obligation "to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" *Hills v. Gautreaux*, 425 U.S. 284, 293-94 (1976). As we have discussed, a proper remedy must be addressed to the difference between things as they are and things as they would have been but for the constitutional violation (the "incremental effect" noted in *Dayton I*). See *Dayton I*, *supra*, 433 U.S. at 420; *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 465; *Berry v. School District of City of Benton Harbor*, 698 F.2d 813, 819 (6th Cir. 1983); *Parents Association of Andrew Jackson High School v. Amback*, 598 F.2d 705, 715 (2d Cir. 1979).<sup>17</sup> Although federal judges may naturally wish to advance their notions of the common good, see, e.g., *Bell v. Wolfish*, 441 U.S. 520, 562 (1979), this Court has admonished that, in cases like this one, "[t]he elimination of racial discrimination in public schools \* \* \* should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities." *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402

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policies or practices and is the result of housing patterns and other forces over which school administrators had no control." *Alexander v. Youngstown Board of Education*, 675 F.2d 787, 791 (1982) (internal quotes omitted). See also *United States v. Board of Education of Valdosta, Georgia*, 576 F.2d 37, 39 (5th Cir. 1978) ("remedy should be tailored to achieving a unitary school system rather than a systemwide racial balance"); *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 321 (7th Cir. 1980) ("no constitutional right to a particular level of racial balance").

<sup>17</sup> The Second Circuit in *Andrew Jackson* reversed an order requiring "school authorities to implement an affirmative plan designed to achieve racial balance at Jackson." 598 F.2d at 715. Noting that Jackson was "already a full minority school" and that this condition was not the result of unlawful discrimination, the court held: "The order to balance Jackson racially, therefore, was unauthorized since it went beyond remedying any conceivable incremental injury caused by the Plan, if the Plan were, indeed, unconstitutional." *Ibid*.

U.S. at 22. To avoid trespass on matters properly left to the other branches of government, a remedy must "indeed be remedial in nature, that is, it must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Milliken II*, *supra*, 433 U.S. at 280, quoting *Milliken I*, *supra*, 418 U.S. at 746; see *United States v. Texas Education Agency*, 600 F.2d 518, 527 (5th Cir. 1979).

Although the Eighth Circuit defended the remedy here on the ground that "[i]t returns the largest number of victims to integrated schools," Pet. App. 34a, that observation begs the basic question: whether they would have had that opportunity *absent the constitutional violation*. If, absent the violation, the City of St. Louis would still have been faced with the prospect of numerous one-race or largely one-race schools, because of a racial distribution caused by personal choices regarding housing or employment or other factors not attributable to proven unconstitutional conduct by the State, then the remedy here goes well beyond that necessary to correct for conditions caused by compulsory segregation. See *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 435-37 (1976). Similarly, even if the prior policy still causes a maldistribution of students within the city schools but has no effect on the relationship between city and suburban schools, the multidistrict remedy imposed here again would be too broad. The existence of a violation in one area does not *ipso facto* infect all surrounding areas without any showing that they were part of the violation or even affected by it.<sup>18</sup>

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<sup>18</sup> The magnet schools, like the busing provisions, are also intended to achieve integration beyond that afforded by the St. Louis district itself. See Pet. App. 43a; note 6, *supra*. Although the court of appeals suggested that the dissenting opinion of Justice Powell in *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 488, "implicitly encouraged the use of magnet schools," Pet. App. 41a, the quoted language makes clear the difference between voluntary programs and programs forced on a State, precisely the point missed by the courts below: "These and like plans, if adopted

This principle was set forth most explicitly in *Milliken I*, *supra*, the only case decided by this Court that involved a comparable remedy. There, the Court noted that "[b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." *Id.* at 744-45. The Court did not rule out an interdistrict remedy in all cases, requiring instead a showing "that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation." *Id.* at 745. The Court concluded, however, that "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Ibid.* See also *Taylor v. Ouachita Parish School Board*, 648 F.2d 959, 964-69 (5th Cir. 1981).

While conceding that no interdistrict violation or effect had been shown in this case,<sup>19</sup> the Eighth Circuit took the position that *Hills v. Gautreaux*, *supra*, dispensed with these requirements in the absence of objecting school dis-

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voluntarily by States, also could help counter the effects of racial imbalance between school districts that are beyond the reach of judicial correction." 443 U.S. at 488.

<sup>19</sup> In reviewing the interdistrict transfers, the court of appeals observed: "Examination of voluntary interdistrict transfers confirms that, as a remedy for an intradistrict violation, such transfers comply with constitutional standards." Pet. App. 31a (emphasis added).

Although the *de jure* system was imposed by a provision of state-wide application, neither the district court nor the court of appeals has made any findings about the continuing effects of that policy in other independent districts outside of the St. Louis district. There has thus been no determination that the suburban school districts retain vestiges of segregation caused by that provision and certainly no determination that the mix of students *between* city and suburban schools would now be different if that policy had not existed. See generally *United States v. Texas*, 680 F.2d 356 (5th Cir. 1982).

tricts. Pet. App. 34a-36a. We think that view misguided. As this Court noted in *Milliken II*, federal decrees are excessive "if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" or, in the alternative, "if they are imposed upon governmental units that were neither involved in nor affected by the constitutional violation, as in *Milliken I*." 433 U.S. at 282. It is true that objections of local school boards are themselves an important ground for questioning an interdistrict remedy, but that does not mean that compliant local school boards may enlarge the remedies against other parties to include redress of conditions not caused by a constitutional violation. Even if local school boards would gladly visit an interdistrict remedy on the State, the courts must nevertheless define the nature of the constitutional violation and observe the limitations on the scope of the remedy, *i.e.*, that the remedy cannot go beyond restoring the plaintiffs to their rightful position.<sup>20</sup>

We also think that the court of appeals has misunderstood the importance of the district lines in this case.

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<sup>20</sup> Although the court of appeals also indicated that its earlier discussions of paragraphs 12(a) and 12(c) had determined the legality of the current order, that view is perplexing for several reasons. First of all, as Judge Gibson convincingly points out, Pet. App. 80a-83a, the previous plans before the court had stressed cooperation among the parties not judicial compulsion. Moreover, while a limited paragraph 12(a) plan had been approved with one sentence of discussion (667 F.2d at 630), no actual plan developed under paragraph 12(c) had ever been before the court, much less a plan drafted to settle the interdistrict liability claims as well. See *Quern v. Jordan*, 440 U.S. 332, 347 n. 18 (1979). To invoke law of the case under such circumstances was, in fact, "a massive bootstrapping effort." Pet. App. 82a.

Even more seriously, however, the reference to law of the case shows a basic misunderstanding about the nature of remedial powers. For given the fact that the remedy has grown like Topsy while the violation has remained unchanged, the court of appeals can only be saying that once a violation has been found, the dimensions of the remedy are irrelevant. That is not the law of this case or any other case. See *Dayton I*, *supra*; *Columbus Board of Education v. Penick*, *supra*.

Those lines are not artificial boundaries, of importance only as they do or do not limit the remedy: they define the scope of the wrong. Unlike the situation in *Hills v. Gautreaux*, *supra*, where “[t]he relevant geographic area for purposes of respondents’ housing options [was] the Chicago housing market, not the Chicago city limits,” 425 U.S. at 299, the relevant area in this case is the school district in which plaintiffs lived. The State of Missouri did not discriminate against city students by denying them admission to suburban schools: the reason that city students attended city schools was that they lived in the City. What this case is about is that, within the City, black students and white students were kept apart. That segregation, and that alone, is the condition that must be eliminated “root and branch.”

Even if *Milliken* I had never been decided, therefore, the order here would still be impermissible. No decision of this Court has ever held that a remedy for a violation limited to a single school system (or part of a school system) may automatically be extended to unaffected systems (or parts of the system) without findings that the impact of the violation reached that far. See *Dayton I*, *supra*; *Dayton II* *supra*; *Columbus Board of Education v. Penick*, *supra*. In *Dayton I*, for example, this Court expressly disapproved a remedy covering an entire school district, finding it “entirely out of proportion to the constitutional violations found by the District Court \* \* \*.” 433 U.S. at 418. In *Dayton II*, however, the Court upheld a system-wide remedy for the same district after the lower courts on remand had made specific findings regarding a system-wide impact arising from the violations. 443 U.S. at 541. Similarly, in *Columbus Board of Education v. Penick*, decided the same day as *Dayton II*, the Court again upheld a system-wide remedy as commensurate with the violations at issue. The Court observed that “both the District Court and the Court of Appeals found that the Board’s purposefully discriminatory conduct and policies had *current, systemwide impact—an essential predicate \* \* \* for a systemwide rem-*



edy.” 443 U.S. at 466 n. 15 (emphasis added). It follows logically that, if a current, system-wide impact is necessary for a system-wide remedy, then a current, multidistrict impact is necessary for a multidistrict remedy.<sup>21</sup>

The concentration of black students in city schools is not unique to St. Louis or to cities that once separated their students by law. As Justice Powell has noted, “most large American cities” face situations “where inner-city populations comprise a large proportion of racial minorities and surrounding suburbs remain white \* \* \*.” *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 485 (Powell, J., dissenting). But where such conditions are “not attributable to any segregative actions” on the part of the State, the proper way to achieve greater integration is a matter for the political branches, not the federal courts, to address. *Pasadena City Board of Education v. Spangler*, *supra*, 427 U.S. at 436. The courts below failed to observe that essential distinction.

b. *The Quality Education and Rebuilding Program.* The other major parts of the plan are equally indefensible. The requirements for widespread improvements throughout the city school system, including a massive rebuilding program and all expenditures necessary to maintain a “AAA” rating, are simply a shopping list compiled by the plaintiffs and City Board. The district court, without any real analysis, then turned that shopping list into law.

Although this Court has previously approved “remedial education programs as part of a desegregation decree,”

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<sup>21</sup> Furthermore, although it is true that within a single district “[a]ctions and omissions by public officials which tend to make black schools blacker necessarily have the reciprocal effect of making white schools whiter,” *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 466 n. 15, segregation within one district does not have a reciprocal effect on other independent districts. Thus, the existence of an all-white school in the St. Louis district would mean that fewer whites attended other schools in that district but would have no effect on racial distribution in suburban districts to which those students would not have gone anyway.

*Milliken II*, *supra*, 433 U.S. at 279,<sup>22</sup> the order in this case makes the order in *Milliken* pale by comparison. Its stated purpose, as set forth in the Settlement Agreement and in the opinion of the court of appeals, was not to correct for any identifiable after-effects of segregation but "to improve the quality of education throughout the St. Louis public schools \* \* \*." See Pet. App. 43a, 183a-184a. To meet that ambitious goal, the Plan required a city-wide pupil-to-teacher ratio of 25:1 (20:1 in largely black schools); all-day kindergarten programs; more art, music and physical education teachers; "nurses, social workers, psychologists, and psychological examiners" at all city schools; preschool centers; library and media services; audio-visual services; and much more. Pet. App. 185a-192a. The total cost to the State has been estimated at 30 to 50 million dollars per year to start, with sharp increases expected later. Furthermore, the court ordered widespread physical improvements in the city schools—apparently in any amount that the City Board desired.<sup>23</sup>

Neither the district court nor the court of appeals offered any constitutional benchmark by which to judge this portion of the remedy. If those courts mean to suggest that each student has a constitutional right "to

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<sup>22</sup> In *Milliken*, the Court concluded that programs targeted at improving reading, eliminating effects of discrimination in testing, counseling victims of prior discrimination, and providing in-service training to teachers were justified by proper findings as "necessary to restore the victims of discriminatory conduct to the position they would have enjoyed in terms of education had these four components been provided in a nondiscriminatory manner in a school system free from pervasive de jure racial segregation." *Id.* at 282. The Court thus rejected the argument, advanced by the State, that the decree had to be limited to "remedying unlawful pupil assignments." *Id.* at 281.

<sup>23</sup> The district court ordered that "[a]ny amount raised for capital expenditures by the City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri." Pet. App. 97a. That seemingly open pocket stimulated the City Board to inflate its bond proposal from the contemplated \$23 million to \$67 million, a change that may account for its defeat.

develop to the limit of his or her ability," Pet. App. 134a, or to attend AAA schools, Pet. App. 54a, that suggestion is plainly incorrect. This Court has held on several occasions that students have no right to public education at all. See *San Antonio Independent School District v. Rodriguez*, *supra*, 411 U.S. at 35; *Plyler v. Doe*, 457 U.S. 202 (1982); *Martinez v. Bynum*, 103 S.Ct. 1838, 1842-43 n. 7 (1983). "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." *San Antonio Independent School District v. Rodriguez*, *supra*, 411 U.S. at 35. Or, as the First Circuit has put it, "better quality education as a general goal is beyond the proper concern of the desegregation court." *Morgan v. Kerrigan*, 530 F.2d 401, 429 (1976).

To the extent, however, that the courts below try to justify these programs as a remedy for prior segregation, the attempt proves its own undoing. To begin with, it is almost nonsensical to think that the parties, while drafting a plan to impose on the State, took special pains to cut the remedy to fit the violation. Judge Bowman noted in his dissent that "[a]s might be expected, there is no indication that the parties to the negotiations made any attempt to measure the incremental segregative effects of the violation on which the plan rests or to remedy only those effects."<sup>24</sup> Pet. App. 92a. In any event, it is clear from the record that the quality education and rebuilding programs do not, by some curious accident, fit the violation. To take one example, if the court of appeals believed that the earlier segregation mandated by the State caused the city schools to have less than a AAA rating, that belief is completely undercut by the fact that those schools *had* a AAA rating every year from 1954 to the present except for five years

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<sup>24</sup> One proponent of the Plan conceded that no urban school system in the United States has all the components included in the Settlement Plan. Pet. App. 93a n. 3. Yet, as we have noted (page 12, *supra*), the district court felt obliged to implement the Plan without any change.



(1974-78 and 1982-83) when they lost it because of the defaults of the City Board. (Indeed, at least for the time being, they have it again.) Nor can city students complain that they were somehow singled out for inferior treatment since their schools had AAA status at a time when many other school districts did not. To take a second example, given the fact that "[i]n the last twenty-four years, St. Louis voters have defeated thirteen [out of fourteen] proposed bond issues," Pet. App. 57a, it is self-evident that the City voters, not any unlawful actions by the State, are responsible for the condition of the city schools. As Judge Gibson observed, "[t]here is nothing to suggest that the condition is other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities." Pet. App. 84a.<sup>25</sup>

We return again to the admonition that "a remedy must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Milliken II*, *supra*, 433 U.S. at 281, quoting *Milliken I*, *supra*, 418 U.S. at 746. Had the district court subjected the Settlement Plan to a proper inquiry, instead of swallowing it whole, we think it would have become evident that, whether or not segregation had ever existed in the St. Louis schools, the St. Louis school board would face the current conditions with regard to staffing, programs, and facilities because of its own failure to address those problems. As the Second Circuit has said, "a court must

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<sup>25</sup> Although the court of appeals did try to provide justifications for some other programs, albeit justifications not mentioned by the district court, those attempts largely serve to demonstrate how subjective a standard guides this remedy. For example, one objective of the Plan is "to enhance the appeal of the city school system"—a goal that is literally endless. Pet. App. 47a. Similarly, the need for all-day kindergartens (at a cost of more than \$6 million per year) is partially explained by the fact that "many of the students come from single-parent families that did not provide them with the skills which would permit them to compete with other children at the first-grade level." Pet. App. 55a. The court makes no effort to relate the existence of that disadvantage to unconstitutional state action.

be alert not to permit a school board to use a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation." *Arthur v. Nyquist*, 712 F.2d 809, 813 (1983), *cert. denied*, No. 83-625 (April 16, 1984). The courts below showed no such alertness.<sup>26</sup>

3. *The Order Wrongfully Interferes with Decisions About State Programs.* The order in this case causes harm on several different levels. The most obvious, of course, is that it wrongfully drains state funds. Even more serious, however, is the fact that it seriously distorts the way in which decisions about state programs should be made.<sup>27</sup>

The relationship between the federal courts and state governments, a frequently awkward byproduct of federalism, has become even more sensitive in recent decades. Throughout that period, this Court and other federal courts have been asked time and again to define rights and prescribe remedies under generally-worded provisions of the Constitution. See *Rhodes v. Chapman*, 452 U.S. 337 (1981); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *San Antonio Independent School District v. Rodriguez*, *supra*; *Bell v. Wolfish*, *supra*. It does not lessen the im-

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<sup>26</sup> Although we have concentrated in this section on the quality improvements throughout all city schools, the improvements directed at "non-integrated schools" are no better supported on this record. See Pet. App. 52a-53a. While the State is willing to compensate for any deficiencies caused by its prior policies, there has been no showing that the students now in "non-integrated schools" have been put at an educational disadvantage because of the earlier state law.

<sup>27</sup> In saying that the harm goes beyond the effect on the state treasury, we do not mean to slight that interest. Although an order requiring more integration or better education is seductive in the same way that an idealized view of prisons or mental facilities or any other state program might be, the practical consequences are less ideal. Unless a State can pull unlimited tax revenues from the pockets of its citizens, an unlikely prospect at the best of times, the true effect of such orders is often to take money away from other, perhaps even more needy, state programs.

portance of these provisions to say that they give almost no historical or practical guidance about the rights at issue. Yet, even as the rights have become more difficult to define and thus more subject to judicial overreaching, the affirmative obligations placed upon the states have become more imposing. A broad federal order affecting state prisons, or mental health facilities, or schools may cost, as in this case, literally hundreds of millions of dollars.

We do not deny, of course, that federal courts have a primary role to play in enforcing constitutional rights. But as the costs of state programs expand, and the pressure on state budgets increases, even local subdivisions may find resort to the federal courts attractive as a means of getting scarce state funds. In this case, for example, the plaintiffs were joined by the City Board as well as the suburban school boards in their effort to force state funding for their programs. In the usual case, if the City School Board wanted to exchange students with other districts, or to add more programs throughout its schools, or to rebuild facilities left unrepaired, it would either have had to bear the costs itself or seek the funds, in competition with other state programs, from the state treasury. Instead, by getting a federal court to adopt a settlement and then enforce it against a non-consenting party, the local boards have been able to bypass state procedures entirely and yet receive a disproportionate helping of state funds. Under the circumstances, as Judge Bowman pointed out, "[n]one of them had any real incentive to prevent the others from piling their plates high with programs and funds that would benefit their school systems." Pet. App. 92a.<sup>28</sup>

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<sup>28</sup> This reaping of state funds, oddly enough, is the harvest of the City Board's refusal to obey the Constitution. As the district court found, after 1954 the State removed all obstacles to integration of schools throughout the State. 469 F. Supp. at 1314. Furthermore, the courts below, while purporting to correct only a violation for which both the City Board and the State have been held responsible, made the State liable for *all* the costs of certain programs, including the interdistrict transfers and the magnet schools. Pet. App. 96a.

It is essential that, in defining rights and devising remedies, federal courts understand the need for a stopping point. While assuring that constitutional rights are preserved, the courts also "must take into account the interests of State and local authorities in managing their own affairs consistent with the Constitution." *Milliken II*, *supra*, 433 U.S. at 281. See also *White v. Weiser*, 412 U.S. 783 (1973); *Karcher v. Daggett*, A-740, 52 U.S.L.W. 3717 (stay application) (Brennan, J., dissenting). Although "states have traditionally been accorded the widest latitude in ordering their internal governmental processes \* \* \* and school boards, as creatures of the State, obviously must give effect to policies announced by the state legislature," *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982), the decision in this case has given one school board a revamped school system without regard to state policies or other state needs. If that decision is allowed to stand, with no more basis than is shown in this record, the limits on the equitable powers of the federal courts will effectively be meaningless.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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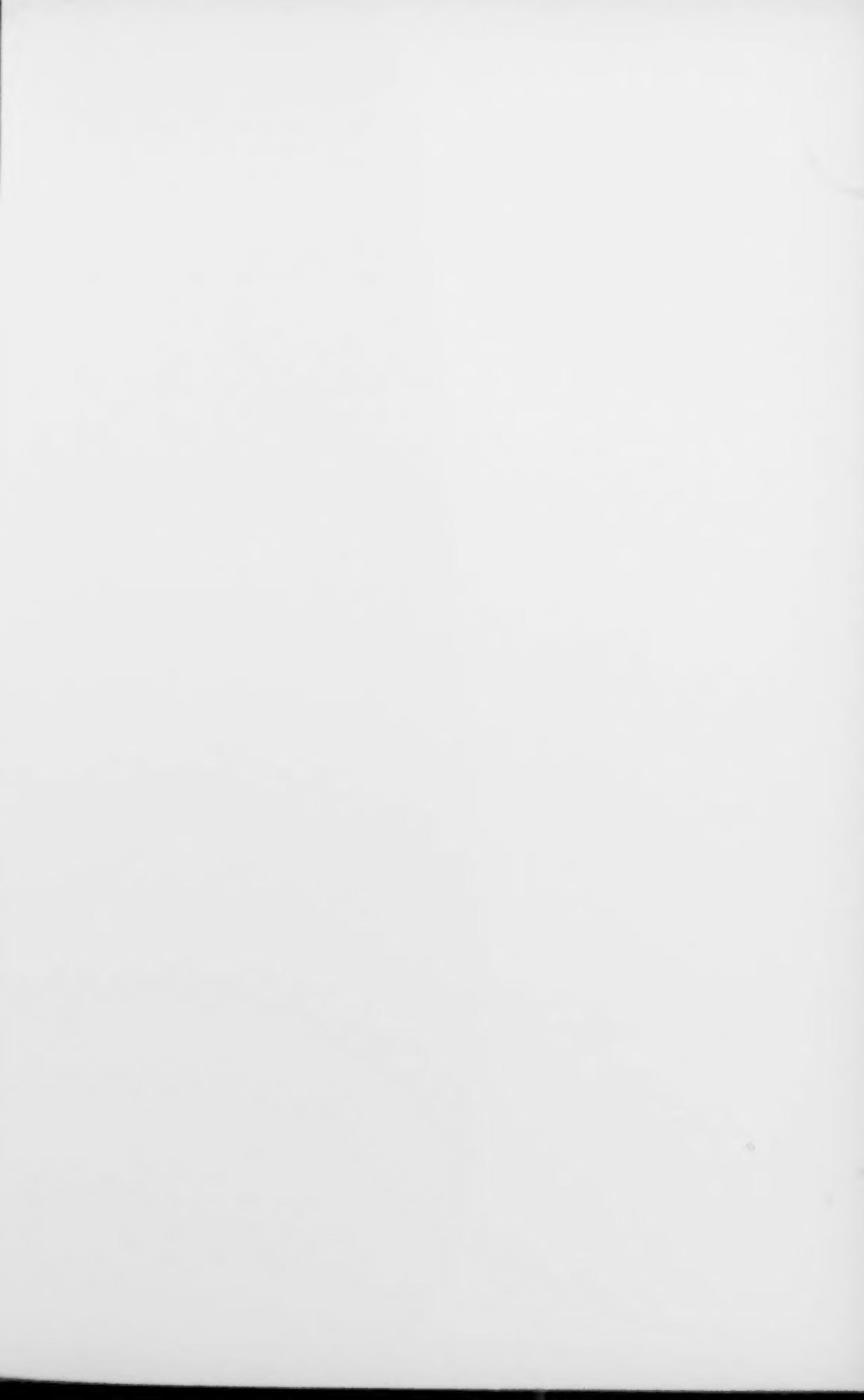
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*Counsel for Petitioners*



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Office - Supreme Court, U.S.

FILED

APR 20 1984

ALEXANDER L. STEVAS.

CLERK

No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

STATE OF MISSOURI, *et al.*,  
*Petitioners,*

v.

CRATON LIDDELL, *et al.*,  
*Respondents.*

APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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APPENDIX A

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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No. 83-1957

---

CRATON LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend, and MINNIE LIDDELL; JOANNA GOLDSBY, a minor, by BARBARA GOLDSBY, her mother and next friend, and BARBARA GOLDSBY; DEBORAH YARBER, a minor, by SAMUEL YARBER, her father and next friend, and SAMUEL YARBER; NATALIE MOORE, a minor, by LOUISE MOORE, her mother and next friend, and LOUISE MOORE; ROCHELLE LEGRAND, a minor, by LOIS LEGRAND, her mother and next friend, and LOIS LEGRAND; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,  
*Appellees,*

EARLINE CALDWELL, LIDDIE CALDWELL, DENISE DANIELS, DWAYNE DANIELS, GWENDOLYN DANIELS, CEDRIC WILLIAMS, STEPHANIE WILLIAMS, GLORIA WILLIAMS, JANIS HUTCHERSON, ROBERT SMITH, EDDIE S. WILLIS, and the National Association for the Advancement of Colored People,

*Appellees,*

CITY OF ST. LOUIS,  
UNITED STATES OF AMERICA,

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DANIEL L. SCHLAFLY, FREDERICK E. BUSSEE, GORDON L. BENSON, MALCOLM W. MARTIN, MRS. ANITA L. BOND, MRS. JOYCE BOWEN, HENRY M. GRICH, JR. (Secretary), REV. JAMES L. CUMMINGS (President), MRS. ERMA J. LAWRENCE, REV. DONALD E. MAYER (Vice President), LAWRENCE MOSER, CHARLES

HARRIS (Members of the School Board); and JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL, DAVIS J. MAHAN, CHARLES BRASFIELD (School District Superintendents); and ROBERT E. WENTZ (Superintendent of Schools), all in their official capacities,

*Appellees,*

ST. LOUIS COUNTY, GENE McNARY, County Executive; HARLOW RICHARDSON, County Treasurer; GEORGE C. LEACHMAN, Collection of St. Louis County Contract Account,

AFFTON BOARD OF EDUCATION, BAYLESS BOARD OF EDUCATION, BRENTWOOD BOARD OF EDUCATION, CLAYTON BOARD OF EDUCATION, FERGUSON-FLORISSANT REORGANIZED R-2, HANCOCK PLACE BOARD OF EDUCATION, HAZELWOOD BOARD OF EDUCATION, JENNINGS BOARD OF EDUCATION, KIRKWOOD BOARD OF EDUCATION, LADUE BOARD OF EDUCATION, LINDBERGH BOARD OF EDUCATION, MAPLEWOOD-RICHMOND HEIGHTS BOARD OF EDUCATION, MEHLVILLE BOARD OF EDUCATION, NORMANDY BOARD OF EDUCATION, PARKWAY BOARD OF EDUCATION, PATTONVILLE BOARD OF EDUCATION, RITENOUR BOARD OF EDUCATION, RIVERVIEW GARDENS BOARD OF EDUCATION, ROCKWOOD BOARD OF EDUCATION, VALLEY PARK BOARD OF EDUCATION, UNIVERSITY CITY BOARD OF EDUCATION, WEBSTER GROVES BOARD OF EDUCATION and WELLSTON BOARD OF EDUCATION,

*Appellees,*

v.

STATE OF MISSOURI; ARTHUR MALLORY, Commissioner of Education of the State of Missouri, in his official capacity; THE STATE OF MISSOURI BOARD OF EDUCATION; CHRISTOPHER S. BOND, Governor of the State of Missouri; JOHN ASHCROFT, Attorney General of the State of Missouri; MELVIN E. CARNAHAN, Treasurer of the

State of Missouri; STEPHEN C. BRADFORD, Commissioner of Administration of the State of Missouri; THE STATE OF MISSOURI BOARD OF EDUCATION and its members: ERWIN A. WILLIAMSON (President), JIMMY ROBERTSON (Vice President), GROVER A. GAMM, DELMAR A. COBBLE, DALE M. THOMPSON, DONALD W. SHELTON and ROBERT WELLING,

*Appellants.*

---

Appeal from the United States District Court  
for the Eastern District of Missouri

---

No. 83-2033

---

CRATON LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend, and MINNIE LIDDELL; JOANNA GOLDSBY, a minor, by BARBARA GOLDSBY, her mother and next friend, and BARBARA GOLDSBY; DEBORAH YARBER, a minor, by SAMUEL YARBER, her father and next friend, and SAMUEL YARBER; NATALIE MOORE, a minor, by LOUISE MOORE, her mother and next friend, and LOUISE MOORE; ROCHELLE LEGRAND, a minor, by LOIS LEGRAND, her mother and next friend, and LOIS LEGRAND; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

*Appellees,*

EARLINE CALDWELL, LIDDIE CALDWELL, DENISE DANIELS, DWAYNE DANIELS, GWENDOLYN DANIELS, CEDRIC WILLIAMS, STEPHANIE WILLIAMS, GLORIA WILLIAMS, JANIS HUTCHERSON, ROBERT SMITH, EDDIE S. WILLIS, and the National Association for the Advancement of Colored People,

*Appellees,*



CITY OF ST. LOUIS,  
UNITED STATES OF AMERICA,

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DANIEL L. SCHLAFLY, FREDERICK E. BUSSEE, GORDON L. BENSON, MALCOLM W. MARTIN, MRS. ANITA L. BOND, MRS. JOYCE BOWEN, HENRY M. GRICH, JR. (Secretary), REV. JAMES L. CUMMINGS (President), MRS. ERMA J. LAWRENCE, REV. DONALD E. MAYER (Vice President), LAWRENCE MOSER, CHARLES HAPRIS (Members of the School Board); and JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL, DAVID J. MAHAN, CHARLES BRASFIELD (School District Superintendents); and ROBERT E. WENTZ (Superintendent of Schools), all in their official capacities,

*Appellees,*

ST. LOUIS COUNTY, GENE McNARY, County Executive; HARLOW RICHARDSON, County Treasurer; GEORGE C. LEACHMAN, Collection of St. Louis County Contract Account,

*Appellees,*

AFFTON BOARD OF EDUCATION, BAYLESS BOARD OF EDUCATION, BRENTWOOD BOARD OF EDUCATION, CLAYTON BOARD OF EDUCATION, FERGUSON-FLOISSANT REORGANIZED R-2, HANCOCK PLACE BOARD OF EDUCATION, HAZELWOOD BOARD OF EDUCATION, JENNINGS BOARD OF EDUCATION, KIRKWOOD BOARD OF EDUCATION, LADUE BOARD OF EDUCATION, LINDBERGH BOARD OF EDUCATION, MAPLEWOOD-RICHMOND HEIGHTS BOARD OF EDUCATION, MEHLVILLE BOARD OF EDUCATION, NORMANDY BOARD OF EDUCATION, PARKWAY BOARD OF EDUCATION, PATTONVILLE BOARD OF EDUCATION, RITENOUR BOARD OF EDUCATION, RIVERVIEW GARDENS BOARD OF EDUCATION, ROCKWOOD BOARD OF EDUCATION, VALLEY PARK BOARD OF EDUCATION, UNIVERSITY CITY BOARD OF EDUCATION, WEBSTER GROVES BOARD OF EDUCATION and WELLSTON BOARD OF EDUCATION,

*Appellees,*

STATE OF MISSOURI; ARTHUR MALLORY, Commissioner of Education of the State of Missouri, in his official capacity; THE STATE OF MISSOURI BOARD OF EDUCATION; CHRISTOPHER S. BOND, Governor of the State of Missouri; JOHN ASHCROFT, Attorney General of the State of Missouri; MELVIN E. CARNAHAN, Treasurer of the State of Missouri; STEPHEN C. BRADFORD, Commissioner of Administration of the State of Missouri; THE STATE OF MISSOURI BOARD OF EDUCATION and its members: ERWIN A. WILLIAMSON (President), JIMMY ROBERTSON (Vice President), GROVER A. GAMM, DELMAR A. COBBLE, DALE M. THOMPSON, DONALD W. SHELTON and ROBERT WELLING,

*Appellees,*

ST. LOUIS TEACHERS UNION, LOCAL 420,  
AMERICAN FEDERATION OF TEACHERS,  
*Appellant.*

---

Appeal from the United States District Court  
for the Eastern District of Missouri

---

No. 83-2118

---

CRATON LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend, and MINNIE LIDDELL; JOANNA GOLDSBY, a minor, by BARBARA GOLDSBY, her mother and next friend, and BARBARA GOLDSBY; DEBORAH YARBER, a minor, by SAMUEL YARBER, her father and next friend, and SAMUEL YARBER; NATALIE MOORE, a minor, by LOUISE MOORE, her mother and next friend, and LOUISE MOORE; ROCHELLE LEGRAND, a minor, by LOIS LEGRAND, her mother and next friend, and LOIS

LEGRAND; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,  
*Appellees,*

EARLINE CALDWELL, LIDDIE CALDWELL, DENISE DANIELS, DWAYNE DANIELS, GWENDOLYN DANIELS, CEDRIC WILLIAMS, STEPHANIE WILLIAMS, GLORIA WILLIAMS, JANIS HUTCHERSON, ROBERT SMITH, EDDIE S. WILLIS, and the National Association for the Advancement of Colored People,

*Appellees,*

CITY OF ST. LOUIS,

*Appellant.*

UNITED STATES OF AMERICA,

*Appellee,*

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DANIEL L. SCHLAFLY, FREDERICK E. BUSSEE, GORDON L. BENSON, MALCOLM W. MARTIN, MRS. ANITA L. BOND, MRS. JOYCE BOWEN, HENRY M. GRICH, JR. (Secretary), REV. JAMES L. CUMMINGS (President), MRS. ERMA J. LAWRENCE, REV. DONALD E. MAYER (Vice President), LAWRENCE MOSER, CHARLES HARRIS (Members of the School Board); and JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL, DAVID J. MAHAN, CHARLES BRASFIELD (School District Superintendents); and ROBERT E. WENTZ (Superintendent of Schools), all in their official capacities,

*Appellees,*

ST. LOUIS COUNTY, GENE McNARY, County Executive, HARLOW RICHARDSON, County Treasurer, GEORGE C. LEACHMAN, Collection of St. Louis County Contract Account,

*Appellees,*

AFFTON BOARD OF EDUCATION, BAYLESS BOARD OF EDUCATION, BRENTWOOD BOARD OF EDUCATION, CLAYTON BOARD OF EDUCATION, FERGUSON-FLORISSANT REORGANIZED R-2, HANCOCK PLACE BOARD OF EDUCATION, HAZELWOOD BOARD OF EDUCATION, JENNINGS BOARD OF EDUCATION, KIRKWOOD BOARD OF EDUCATION, LADUE BOARD OF EDUCATION, LINDBERGH BOARD OF EDUCATION, MAPLEWOOD-RICHMOND HEIGHTS BOARD OF EDUCATION, MEHLVILLE BOARD OF EDUCATION, NORMANDY BOARD OF EDUCATION, PARKWAY BOARD OF EDUCATION, PATTONVILLE BOARD OF EDUCATION, RITENOUR BOARD OF EDUCATION, RIVERVIEW GARDENS BOARD OF EDUCATION, ROCKWOOD BOARD OF EDUCATION, VALLEY PARK BOARD OF EDUCATION, UNIVERSITY CITY BOARD OF EDUCATION, WEBSTER GROVES BOARD OF EDUCATION and WELLSTON BOARD OF EDUCATION,

v.

*Appellees,*

STATE OF MISSOURI; ARTHUR MALLORY, Commissioner of Education of the State of Missouri, in his official capacity; THE STATE OF MISSOURI BOARD OF EDUCATION; CHRISTOPHER S. BOND, Governor of the State of Missouri; JOHN ASHCROFT, Attorney General of the State of Missouri; MELVIN E. CARNAHAN, Treasurer of the State of Missouri; STEPHEN C. BRADFORD, Commissioner of Administration of the State of Missouri; THE STATE OF MISSOURI BOARD OF EDUCATION and its members: ERWIN A. WILLIAMSON (President), JIMMY ROBERTSON (Vice President), GROVER A. GAMM, DELMAR A. COBBLE, DALE M. THOMPSON, DONALD W. SHELTON and ROBERT WELLING,

*Appellees,*

ST. LOUIS TEACHERS UNION, LOCAL 420,  
AMERICAN FEDERATION OF TEACHERS,

*Appellant.*


---

Appeal from the United States District Court  
for the Eastern District of Missouri

---

8a

No. 83-2140

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IN RE: CITY OF ST. LOUIS, PAUL BERRA  
and RONALD A. LEGGETT,  
*Petitioners,*

---

Petition for Writ of Prohibition

---

No. 83-2220

---

CRATON LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend, and MINNIE LIDDELL; JOANNA GOLDSBY, a minor, by BARBARA GOLDSBY, her mother and next friend, and BARBARA GOLDSBY; DEBORAH YARBER, a minor, by SAMUEL YARBER, her father and next friend, and SAMUEL YARBER; NATALIE MOORE, a minor, by LOUISE MOORE, her mother and next friend, and LOUISE MOORE; ROCHELLE LEGRAND, a minor, by LOIS LEGRAND, her mother and next friend, and LOIS LEGRAND; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,  
*Appellees,*

EARLINE CALDWELL, LIDDIE CALDWELL, DENISE DANIELS, DWAYNE DANIELS, GWENDOLYN DANIELS, CEDRIC WILLIAMS, STEPHANIE WILLIAMS, GLORIA WILLIAMS, JANIS HUTCHERSON, ROBERT SMITH, EDDIE S. WILLIS, and the National Association for the Advancement of Colored People,

*Appellees,*

CITY OF ST. LOUIS,  
UNITED STATES OF AMERICA,

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DANIEL L. SCHLAFLY, FREDERICK E. BUSSEE, GORDON L. BENSON, MALCOLM W. MARTIN, MRS. ANITA L. BOND, MRS. JOYCE BOWEN, HENRY M. GRICH, JR. (Secretary), REV. JAMES L. CUMMINGS (President), MRS. ERMA J. LAWRENCE, REV. DONALD E. MAYER (Vice President), LAWRENCE MOSER, CHARLES HARRIS (Members of the School Board); and JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL, DAVID J. MAHAN, CHARLES BRASFIELD (School District Superintendents); and ROBERT E. WENTZ (Superintendent of Schools), all in their official capacities,  
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ST. LOUIS COUNTY, GENE McNARY, County Executive, HARLOW RICHARDSON, County Treasurer, GEORGE C. LEACHMAN, Collection of St. Louis County Contract Account,

*Appellees,*

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UCATION, WEBSTER GROVES BOARD OF EDUCATION and  
WELLSTON BOARD OF EDUCATION,

*Appellees,*

STATE OF MISSOURI; ARTHUR MALLORY, Commissioner of  
Education of the State of Missouri, in his official ca-  
pacity; THE STATE OF MISSOURI BOARD OF EDUCATION;  
CHRISTOPHER S. BOND, Governor of the State of Mis-  
souri; JOHN ASHCROFT, Attorney General of the State  
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A. COBBLE, DALE M. THOMPSON, DONALD W. SHELTON  
and ROBERT WELLING,

ST. LOUIS TEACHERS UNION, LOCAL 420,  
AMERICAN FEDERATION OF TEACHERS,

NORTH ST. LOUIS PARENTS and CITIZENS for QUALITY  
EDUCATION, an unincorporated association, including  
WILLIAM UPCHURCH, VIVIAN ALI, and DOROTHY ROBINS,  
parents of children attending the St. Louis city public  
schools and members of the regional plaintiff classes  
who objected to the settlement agreement,

*Appellants.*

---

Appeal from the United States District Court  
for the Eastern District of Missouri

---

CRATON LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend, and MINNIE LIDDELL; JOANNA GOLDSBY, a minor, by BARBARA GOLDSBY, her mother and next friend, and BARBARA GOLDSBY; DEBORAH YARBER, a minor, by SAMUEL YARBER, her father and next friend, and SAMUEL YARBER; NATALIE MOORE, a minor, by LOUISE MOORE, her mother and next friend, and LOUISE MOORE; ROCHELLE LEGRAND, a minor, by LOIS LEGRAND, her mother and next friend, and LOIS LEGRAND; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,  
*Appellees,*

EARLINE CALDWELL, LIDDIE CALDWELL, DENISE DANIELS, DWAYNE DANIELS, GWENDOLYN DANIELS, CEDRIC WILLIAMS, STEPHANIE WILLIAMS, GLORIA WILLIAMS, JANIS HUTCHERSON, ROBERT SMITH, EDDIE S. WILLIS, and the National Association for the Advancement of Colored People,

*Appellees,*

CITY OF ST. LOUIS,  
UNITED STATES OF AMERICA,

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DANIEL L. SCHLAFLY, FREDERICK E. BUSSEE, GORDON L. BENSON, MALCOLM W. MARTIN, MRS. ANITA L. BOND, MRS. JOYCE BOWEN, HENRY M. GRICH, JR. (Secretary), REV. JAMES L. CUMMINGS (President), MRS. ERMA J. LAWRENCE, REV. DONALD E. MAYER (Vice President), LAWRENCE MOSER, CHARLES HARRIS (Members of the School Board); and JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL,

DAVID J. MAHAN, CHARLES BRASFIELD (School District Superintendents); and ROBERT E. WENTZ (Superintendent of Schools), all in their official capacities,  
*Appellees,*

ST. LOUIS COUNTY, GENE McNARY, County Executive, HARLOW RICHARDSON, County Treasurer, GEORGE C. LEACHMAN, Collection of St. Louis County Contract Account,  
*Appellees,*

AFFTON BOARD OF EDUCATION, BAYLESS BOARD OF EDUCATION, BRENTWOOD BOARD OF EDUCATION, CLAYTON BOARD OF EDUCATION, FERGUSON-FLORISSANT REORGANIZED R-2, HANCOCK PLACE BOARD OF EDUCATION, HAZELWOOD BOARD OF EDUCATION, JENNINGS BOARD OF EDUCATION, KIRKWOOD BOARD OF EDUCATION, LADUE BOARD OF EDUCATION, LINDBERGH BOARD OF EDUCATION, MAPLEWOOD-RICHMOND HEIGHTS BOARD OF EDUCATION, MEHLVILLE BOARD OF EDUCATION, NORMANDY BOARD OF EDUCATION, PARKWAY BOARD OF EDUCATION, PATTONVILLE BOARD OF EDUCATION, RITENOUR BOARD OF EDUCATION, RIVERVIEW GARDENS BOARD OF EDUCATION, ROCKWOOD BOARD OF EDUCATION, VALLEY PARK BOARD OF EDUCATION, UNIVERSITY CITY BOARD OF EDUCATION, WEBSTER GROVES BOARD OF EDUCATION and WELLSTON BOARD OF EDUCATION,  
*Appellees,*

## v.

STATE OF MISSOURI; ARTHUR MALLORY, Commissioner of Education of the State of Missouri, in his official capacity; THE STATE OF MISSOURI BOARD OF EDUCATION; CHRISTOPHER S. BOND, Governor of the State of Missouri; JOHN ASHCROFT, Attorney General of the State of Missouri; MELVIN E. CARNAHAN, Treasurer of the State of Missouri; STEPHEN C. BRADFORD, Commissioner of Administration of the State of Missouri; THE

STATE OF MISSOURI BOARD OF EDUCATION and its members: ERWIN A. WILLIAMSON (President), JIMMY ROBERTSON (Vice President), GROVER A. GAMM, DELMAR A. COBBLE, DALE M. THOMPSON, DONALD W. SHELTON and ROBERT WELLING,

*Appellants.*

---

Appeal from the United States District Court  
for the Eastern District of Missouri

---

Submitted: November 28, 1983

Filed: February 8, 1984

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Opinion of the Court *En banc*, LAY, Chief Judge, HEANEY, BRIGHT, ROSS, MCMILLIAN, ARNOLD, and FAGG, Circuit Judges, with JOHN R. GIBSON, Circuit Judge, concurring in part and dissenting in part, and BOWMAN, Circuit Judge, dissenting.

The Caldwell and Liddell plaintiffs, representing black students and parents of the St. Louis City School District, the City School District, and several suburban school districts have entered into a unique and comprehensive settlement agreement designed to further desegregation in the city schools. The United States District Court has approved the agreement and has entered orders to fund the plan.

With the exceptions and limitations noted in the opinion, we approve the agreement and the order entered by the district court with respect to:

The voluntary transfers of students between the city and suburban schools and the establishment of additional magnet schools and integrative programs in

the City School District as necessary to the successful desegregation of the city schools;

The quality education programs for the nonintegrated schools in the City School District;

The quality education programs for all schools in the City School District, but only insofar as these programs have been shown to be necessary for the city to retain its Class AAA rating or to be essential to the successful desegregation of the city schools as hereinafter set forth;

The provisions of the district court's order requiring the State of Missouri, as the primary constitutional violator, to pay the full cost of city to suburb and suburb to city transfers, magnet schools and integrative programs in the city schools, and one-half of the cost of the quality education programs in the city schools. We decline to approve the district court order insofar as it requires the State to fund student transfers between suburban school districts and to fund magnet schools or integrative programs in those suburban districts;

Improved facilities for the city schools. We require further planning, however, before construction begins, to identify with particularity the projects that will be undertaken, and to take account of a probable decline in the city school population in the next few years.

We outline the steps that the district court must take before it can require an increase in real estate taxes to fund the City Board's share of the quality education component of the plan without a vote of the people, and the steps that the court must take before it can require that bonds be issued to fund the City Board's share of capital improvements without a similar vote. We make it clear, however, that no party found to have violated the Constitution will be permitted to escape its obligation to

provide equal educational opportunity to the black children of St. Louis.

We make it clear that the suburban schools meeting the goals set forth in the plan will receive a final judgment declaring that they have satisfied their desegregation obligations.

Finally, we recognize that the settlement agreement and the district court's order will have to be modified to conform to this opinion, and we are aware that the cost of the plan, particularly to the State, will be significantly reduced. In our view, however, the changes do not alter the essential character of the plan, and they preserve its constitutionality. The parties to the settlement agreement are required to decide promptly whether they will accept the changes set forth in this opinion. If they refuse to do so, the interdistrict trial will proceed.

## I. PROCEDURAL HISTORY.

In February, 1972, a group of black parents (the Liddell plaintiffs) filed a class action against the City Board, the board members, and school administrators, alleging racial segregation in the city's schools in violation of the fourteenth amendment. The defendants' motion to join the State of Missouri and St. Louis County (containing the suburban school districts) as codefendants was denied on December 1, 1973. A year later, the parties entered into a consent agreement which provided for an increase in the number of minority teachers and included a pledge by the City Board to attempt to "relieve the residence-based racial imbalance in the City schools." *Liddell v. Bd. of Educ.*, 469 F. Supp. 1304, 1310 (E.D. Mo. 1979).

The case first came before this Court in 1976,<sup>1</sup> when the Caldwell plaintiffs appealed the district court's denial

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<sup>1</sup> We recounted the procedural history of this litigation in *Liddell v. Bd. of Educ.*, 677 F.2d 626, 628 n.1 (8th Cir. 1982) (*Liddell V*), *cert. denied*, 103 S. Ct. 172 (1983) and *Adams v. United States*,



of their right to intervene. We granted intervention, but declined to pass on the constitutionality of the consent decree. *Liddell v. Caldwell*, 546 F.2d 768 (8th Cir.) (*Liddell I*), *cert. denied*, 433 U.S. 914 (1976). We encouraged the United States and State of Missouri to intervene, recommended the creation of a biracial citizens committee to assist in formulating a desegregation plan, and suggested voluntary interdistrict student transfers as one remedial tool. *Id.* at 774.

Desegregation plans were developed and submitted to the district court by the City Board, the Liddell plaintiffs, the Caldwell plaintiffs, and the United States as amicus curiae. Before approving any plan, the district court ordered a trial to determine whether there had been a constitutional violation and to frame a remedy if a violation was found. The United States, the City of St. Louis, and two white citizens' groups were allowed to intervene as plaintiffs. The State of Missouri, the State Board of Education, and the Commissioner of Education were added as defendants. The district court found no constitutional violation, and held that the City Board had achieved a unitary school system in 1954-56 through its "neighborhood school policy." *Liddell v. Bd. of Educ.*, *supra*, 469 F. Supp. at 1360-1361.

We reversed the district court in *Adams v. United States*, 620 F.2d 1277 (8th Cir.) (*en banc*), *cert. denied*, 449 U.S. 826 (1980),<sup>2</sup> holding that the City Board and the State were jointly responsible for maintaining a segregated school system. In reaching this decision, we noted that the Missouri State Constitution had mandated separate schools for "white and colored children" through 1976, that the State had not taken prompt and effective

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620 F.2d 1277, 1281-1283 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980).

<sup>2</sup> We also ruled on several procedural questions in the interim between *Liddell I* and *Adams*, see *Liddell v. Caldwell*, 553 F.2d 557 (8th Cir. 1977) (*Liddell II*).

steps to desegregate the city schools after *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (*Brown I*), and that the City Board's policies and practices since 1956 had contributed to the existing segregation. We remanded to the district court and directed that the schools be promptly desegregated. We suggested the following techniques:

(1) Developing and implementing compensatory and remedial educational programs. \* \* \*

(2) Developing and implementing programs providing less than full-time integrated learning experiences.

(3) Developing and implementing a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County. \* \* \*

(4) Maintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education.

(5) Establishing an Educational Park.

(6) Continuing and expanding a policy of permissive transfers in the district.

*Adams v. United States*, *supra*, 620 F.2d at 1296-1297 (citations omitted).

After holding extensive evidentiary hearings, the district court approved a system-wide desegregation plan for the city schools beginning with the 1980-81 school year. *Liddell v. Bd. of Educ.*, 491 F. Supp. 351 (E.D. Mo. 1980). This plan included a comprehensive program of exchanging and transferring students between the city and suburban schools, the establishment of magnet schools and integrative programs, and a quality education component. In approving the plan, the district court concluded:

In sum, the State defendants stand before the Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty. Their efforts to pass the buck among themselves and to other state instrumentalities must be rejected[.]

*Id.* at 359.

We affirmed the district court's plan on appeal. *Liddell v. Bd. of Educ.*, 667 F.2d 643 (8th Cir. 1981) (*Liddell III*), *cert. denied*, 454 U.S. 1081, 1091 (1982). In so doing, we decided that it was constitutionally permissible to allow a number of all-black schools to remain in the city. We noted that no all-white schools would remain, that a plan of voluntary interdistrict transfers would be initiated, that magnet schools and integrative programs would be established, and that a substantial part of the desegregation budget would be spent to improve the quality of education in the all-black schools. We affirmed the State's liability for desegregation costs and remanded for continued implementation of the plan.

Questions about this plan's implementation came before us in early 1982, when the State again protested its liability for certain desegregation costs. *Liddell v. Bd. of Educ.*, 677 F.2d 626 (8th Cir.) (*Liddell V*), *cert. denied*, 103 S. Ct. 172 (1982).<sup>3</sup> We affirmed the district court's allocation of costs, placing one-half of the actual desegregation costs on the State. We also required the State to pay the costs of voluntary interdistrict transfers and the costs of merging city and county vocational educational programs. Meanwhile, the City Board and the Liddell and Caldwell plaintiffs continued to seek the consolidation of the city and county schools into a single integrated school district on the theory that the suburban schools had also violated the Constitution. They successfully moved to add the county school districts and St. Louis

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<sup>3</sup> We issued a procedural order in the interim. *Liddell v. Bd. of Educ.*, 693 F.2d 721 (8th Cir. 1981) (*Liddell IV*).

County officials as defendants to this litigation. We noted that the suburban schools could not be held as constitutional violators without further evidentiary hearings and findings by the district court. We again noted that the State and City Board—already adjudged violators of the Constitution—could be required to fund measures designed to eradicate the remaining vestiges of segregation in the city schools, including measures which involved the voluntary participation of the suburban schools. *Liddell V, supra*, 677 F.2d at 641.<sup>4</sup>

The district court entered an order on August 6, 1982, which disclosed the mandatory interdistrict plan it would impose in the event the suburban school districts were found liable for constitutional violations. This plan would create one unified metropolitan school district with a uniform tax rate. The court then scheduled interdistrict liability hearings.

Before these hearings were held, however, the City Board, the Liddell plaintiffs, the Caldwell plaintiffs, and all twenty-three county school districts developed a settlement agreement with the assistance of a court-appointed expert and filed a proposed consent decree on March 30, 1983. This agreement settled the plaintiffs' interdistrict claims against the county school districts, and also en-

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<sup>4</sup> We suggested that

the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experience for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict transfer.

*Liddell V, supra*, 677 F.2d at 641-642 (footnote omitted).

abled the State and City Board to take important steps to desegregate the city schools through the voluntary participation of the county schools, as we outlined in *Liddell V.*

The settlement plan has several components. It provides for voluntary interdistrict transfers between city and suburban schools and includes fiscal incentives to encourage these transfers. Each county school district which receives enough transfers within five years to satisfy its desegregation obligations under the plan will receive a final judgment. Affirmative hiring requirements and voluntary teacher transfers are included in the plan to assure it will have a substantial impact in the county schools. To attract white student transfers to the city, and also to provide remedial programs for city students, the plan creates additional magnet schools in the city and the county, and has several compensatory and remedial education components. These latter components are designed to improve the quality of education in the city schools, and to make special improvements in the all-black schools.

After the parties filed the settlement agreement, the district court conducted hearings in April and May of 1983 to determine whether the settlement plan is fair, reasonable, and adequate. In its July 5, 1983, order, the court concluded the plan met these standards and allocated the costs of the plan between the State and City Board. *Liddell v. Bd. of Educ.*, 567 F. Supp. 1037 (E.D. Mo. 1983). The State is totally responsible for the costs of the voluntary interdistrict transfers, the magnet schools, and various part-time and alternative integrative programs. Further, the State will pay one-half of the cost of the quality improvements in the city schools and one-half of the capital improvements required by the plan. The City Board is required to pay the remaining costs.

The district court ordered the City Board to submit a bond issue to its voters before February 1, 1984, to fund

its share of the capital improvements required under the plan. In the event this bond issue failed to obtain the necessary two-thirds vote the court reserved authority to consider an appropriate order to fund these capital improvements.<sup>5</sup> The district court also deferred a scheduled reduction in the City Board's operating levy otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C) insofar as this revenue is necessary to fund the City Board's share of desegregation costs. It further reserved authority to order an increase in the City Board's property tax rate, following notice and a hearing on the amount, if the revenue necessary to fund the City Board's constitutional obligation to desegregate the city schools is not otherwise available.

Several weeks after the district court entered its order approving the settlement, the State filed a motion to stay the implementation of the plan. The City of St. Louis filed a petition for a writ of prohibition seeking the same result. The district court denied both of these motions, and the State and City of St. Louis appealed to our Court. In an en banc order, *Liddell v. Missouri*, 717 F.2d 1180 (8th Cir. 1983) (*Liddell VI*), we denied the stay with certain exceptions. We froze the number of inter-district transfers and deferred any further district court action concerning the City Board's property tax rate. We also deferred action on the writ of prohibition until we considered the case on its merits.

Appeals were filed from the district court's July 5, 1983, order by the State of Missouri, the City of St. Louis, the North St. Louis Parents and Citizens for Quality Education, and the St. Louis Teachers Union.

The State contends on appeal that the district court erred: (1) in approving additional interdistrict transfers

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<sup>5</sup> The two-thirds majority is required by Mo. Const. art. VI, § 26(b). This bond issue election was held on November 8, 1983, and it failed, receiving fifty-five percent voter approval.



of students, and requiring the State to pay the full cost of the additional transfers; (2) in approving additional magnet schools and part-time integrative programs, and requiring the State to pay their full cost; (3) in approving certain programs to improve the quality of education in the city schools, and requiring the State to pay one-half the cost of these programs; and (4) in ordering a deferral of scheduled property tax reduction for the city schools, and in stating that it would order a further increase in property taxes to fund the City Board's share of the cost of the quality education programs in the city schools.

The City of St. Louis joins in questioning the authority of the district court to enter the taxing order referred to in (4) above.

The St. Louis Teachers Union contends that the district court erred in denying its motion to intervene.

The Northside Parents Organization contends that the district court erred in failing to provide more extensive relief to the black students who would remain in the non-integrated schools.

The United States did not file a notice of appeal or cross-appeal. It did file a brief and it was permitted to argue its position before the Court *en banc*. It appears to argue that many of the programs authorized by the district court may be necessary to desegregate the city schools, but questions whether the district court's factual findings are sufficient to support all aspects of the district court's remedial order. It asks this Court to remand to the district court to correct the alleged deficiencies.<sup>6</sup>

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<sup>6</sup> We question whether the United States should be heard as a party. Parties who do not appeal from a trial court judgment cannot be heard to attack that judgment, either to enlarge their own rights, or to lessen the rights of their adversary. See *Morley Construction Co. v. Maryland Casualty Co.*, 300 U.S. 185, 190-191 (1937);

## II. INTERDISTRICT TRANSFERS.

On July 2, 1981, the district court entered an order authorizing voluntary interdistrict transfers and requiring the State to pay the cost of the transfers. The program was initiated at the beginning of the 1981-82 school year, and by the end of the 1982-83 school year, it had grown so that 873 city students were attending county schools and 318 county students were attending city schools. All but seven of the 318 were enrolled in city magnet schools. The State of Missouri paid the cost of these transfers, including transportation costs and fiscal incentives, to the sending and receiving schools.

The settlement agreement calls for an expanded program of interdistrict transfers. City-to-county transfers of black students will be permitted to grow incrementally until they reach 15,000. No limit is placed on the county-to-city transfers, but the number is not expected to exceed 3,000. These transfers are expected to be primarily to city magnet schools and programs. Transfers between county districts are also permitted. All student transfers are voluntary.

The State's funding obligations remain as they were under the July 2, 1981, order: It must pay transportation costs and must pay to the receiving district for each transferring student an amount equal to the receiving district's cost per pupil, less State aid and trust fund

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*United States v. American Railway Express Co.*, 265 U.S. 425, 435 (1924); *Stella v. DePaul Community Health Center, Inc.*, 642 F.2d 258, 261 (8th Cir. 1981); *Johnson v. United States Fire Ins. Co.*, 586 F.2d 1291, 1294 n.7 (8th Cir. 1978); *Tiedeman v. Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 513 F.2d 1267, 1271-1273 (8th Cir. 1975).

Here, the United States is requesting that the district court's order be vacated and that the case be remanded for further findings. This result would "lessen the rights" of the parties to the settlement agreement. In practical terms, however, we have considered the United States's position as an *amicus curiae*.

allocation. It is further required to provide fiscal incentives to sending districts which may elect payment under one of two formulas: either one-half of the State aid the district would have received had the student not transferred; or, beginning in 1984-85, if a district sends more students than it receives, State aid based on the district's enrollment for the second prior year. To be eligible for transfer, students of good standing must be in the racial majority in their home districts and must transfer to districts where they would be in the racial minority.

After approval of the settlement agreement, transfers rose dramatically. During the current school year, 2,294 city students have transferred to suburban districts and three hundred and eighty-nine suburban students have transferred to city schools. Thirty-four suburban students have transferred to other suburban districts. One thousand nine-hundred and sixty-five additional city-to-county transfer applications are on file.

The settlement agreement provides that participating districts will receive a final judgment releasing them from further liability if they achieve the plan ratio<sup>7</sup> within five years. Litigation is stayed during this period. If the school district does not reach the plan ratio, litigation can be renewed after first pursuing various negotiating procedures. If the liability of any individual school district is litigated, the plaintiffs must prove liability and may not seek reorganization or consolidation of school districts, nor may they seek a minority enrollment exceeding twenty-five percent of the school district.

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<sup>7</sup> Under the Plan Ratio, \* \* \* a suburban school district would accept up to as many black transfer students as would constitute 15 percent of the total student population in that district, but no suburban school district would be required to accept more black transfer students than would raise the overall percentage of blacks in the total student population higher than 25 percent.

The State argues that the district court order approving the settlement agreement and requiring the State to pay the full cost of interdistrict transfers cannot be sustained because it imposes an interdistrict remedy based on an intradistrict violation. We disagree for two reasons: First, the issue has previously been decided adversely to the State; second, the interdistrict transfers are intrinsic to an effective remedy for the intradistrict violation and are justified by precedent.

A. *The Propriety of the District Court's Order With Respect to Interdistrict Transfers Has Been Previously Decided.*

This Court has repeatedly authorized the interdistrict transfer of students as a fundamental element of an effective remedy for the unconstitutional segregation of the city schools. In *Adams v. United States*, *supra*, 620 F.2d at 1296, we specifically approved the development and implementation of "a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County."

In *Liddell III*, *supra*, 667 F.2d at 650, we rejected the State's argument that the district court was without authority to formulate an interdistrict plan without finding an interdistrict violation. We also noted that voluntary interdistrict pupil exchanges "must be viewed as a valid part of the attempt to fashion a workable remedy within the City." *Id.* at 651. In an order appended to that opinion, we noted that the State had been "judicially determined to be a primary constitutional violator," and we held that an interdistrict transfer plan would be salutary and would be entirely enforceable against the State. *Id.* at 659.

Finally, in *Liddell V*, *supra*, 677 F.2d at 630, we reiterated our conclusion that, because the State had been found a primary constitutional wrongdoer, it can "be required to take those actions which will further the de-

segregation of the city schools even if the actions required will occur outside the boundaries of the city school district." After discussing broad-based interdistrict proposals and dismissing them as unsuitable, we addressed the proper limits of the district court's equitable remedial authority:

[T]he district court can require the existing defendants—the state and city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could \* \* \*

(4) require the state to provide additional incentives for voluntary interdistrict transfer.

*Id.* at 641-642 (footnote omitted).

We did not act hastily or arbitrarily in approving voluntary interdistrict transfers. We outlined the reasons for our decision in *Adams v. United States*, *supra*, 620 F.2d at 1291-1297. We reviewed the parties' proposed remedial alternatives, several of which involved extensive cross-busing between city schools. The Caldwell plaintiffs proposed a seventy-five percent black/twenty-five percent white racial mix within the district. The Liddell plaintiffs, through their expert witness, Dr. David Colton, proposed a four-tier division of the schools by age groups, which would integrate schools above fourth grade to achieve a sixty percent/forty percent or fifty-five percent/forty-five percent ratio of black to white students. All whites above third grade would attend integrated schools and all blacks would receive at least one-third of their education above third grade in integrated schools. The Department of Justice, through its expert witness, Dr. Gary Orfield, proposed maintenance and expansion of integration in all grades, voluntary interdistrict and intra-district transfers, magnet schools, integration of personnel, and community involvement. The Board of Education proposed the creation of integrated junior high

schools which would funnel students to high schools in a balanced fashion. Magnet schools would supplement these junior high schools. The white parents proposed that the schools be left as they were or, alternatively, that the city and county schools be merged and a comprehensive plan for interdistrict student transfers be developed.

Of the four plans submitted by the parties, we found that only the Colton and Orfield plans were constitutionally permissible. We rejected the City Board's plan as too little too late: elementary schools would remain entirely segregated and desegregation of the upper tiers would be delayed four to seven years. We rejected the Caldwell plan because the record supported the district court's finding that implementation of the plan would probably result in an all-black school system within a few years. We found that the Colton plan was permissible with some substantial changes, but that plan was discarded by the district court after it found that the plan was "educationally unsound" and that it would "fail to achieve effective desegregation." *Liddell v. Bd. of Educ.*, *supra*, 491 F. Supp. at 356.

The approach suggested by the United State's expert, Dr. Orfield, was ultimately adopted by the district court as the plan that held "the promise of providing 'the greatest possible degree of actual desegregation, taking into account the practicalities of the situation.'" *Id.* at 359, citing *Davis v. Bd. of School Comm'rs*, 402 U.S. 33, 37 (1971). We reaffirmed our support of the Orfield plan in *Liddell III*, *supra*, 667 F.2d at 649-653. We noted that it was the only constitutionally permissible plan submitted that could achieve stable, effective integration while minimizing transportation of students and maintaining integrated schools in integrated neighborhoods. *Id.* at 650.

The State defendants have raised the question of remedial scope twice before the Supreme Court. On June 17, 1981, the State filed a petition for certiorari from



our panel opinion in *Liddell III*. In that petition, the State argued that there was no basis for State liability:

The evidence in this case indicates that the State of Missouri took the necessary and appropriate steps to remove the legal underpinnings of segregated schooling as well as affirmatively prohibiting such discrimination.

State's Petition for Certiorari, No. 80-2152, June 17, 1981, at 17.

It further argued:

The District Court exceeded its authority in ordering the preparation of a plan of voluntary pupil exchanges between the St. Louis School District and nonparty school districts because (1) an interdistrict violation has neither been pleaded nor proven, and (2) the District Court cannot, consistent with *Milliken v. Bradley*, order the State of Missouri to fund such a voluntary plan simply on the basis of an intra-district violation.

*Id.* at 20.

The Supreme Court denied certiorari. *Missouri v. Liddell*, 454 U.S. 1091 (1981).

Not satisfied with this answer, the State raised the same arguments again before our Court in *Liddell IV* and *Liddell V*. Unsuccessful in our Court, the State filed a second petition for certiorari with the Supreme Court on April 30, 1982. The State again argued that

ordering an inter-district remedy [the 12(a) voluntary transfers, funded by the State] without first finding an inter-district violation and inter-district effect is in conflict with this court's decision in *Milliken v. Bradley I* [and *Hills v. Gautreaux*].

State's Petition for Certiorari, No. 81-2022, April 30, 1982, at 7; see also *id.* at 10.

Again, the Supreme Court denied certiorari. *Missouri v. Liddell*, 103 S. Ct. 172 (1982). Both of the State's petitions for certiorari came after the Supreme Court's decision in *Hills v. Gautreaux*, 425 U.S. 284 (1976).<sup>8</sup>

As a result of our previous holdings and of the Supreme Court's inaction, the use of interdistrict transfers is settled as law of the case. While this doctrine does not foreclose this Court from correcting its errors, it prevents repeated litigation of the same issue and promotes uniformity of decision. In *Re Exterior Siding and Aluminum Coil Antitrust Litigation*, 696 F.2d 613, 616 (8th Cir. 1982), *vacated en banc*, 705 F.2d 980 (8th Cir. 1983), *cert. denied*, 104 S. Ct. 204 (1983). We will reconsider a previously decided issue only on a showing of clear error and manifest injustice. *United States v. Unger*, 700 F.2d 445, 450 n.10 (8th Cir.), *cert. denied*, 104 S. Ct. 339 (1983); *Wrist-Rocket Mfg. v. Saunders Archery Co.*, 578 F.2d 727, 730-731 (8th Cir. 1978).

We are loath to retract our previous declarations on settled issues when a case returns on appeal; to do so ignores important considerations of judicial economy and ignores our interest in protecting the settled expectations of parties who have conformed their conduct to our guidelines. In this case, our conclusion that State-funded interdistrict transfers are an appropriate remedy is strengthened by our previous invocation of the law of the case doctrine. *Liddell V*, *supra*, 677 F.2d at 629-630.

The State argues that we should not be bound by our earlier decisions because the magnitude of the proposed plan, with respect both to cost and number of students,

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<sup>8</sup> Although denial of certiorari does not necessarily imply approval of the decision below on the merits, this Court has recognized that denial of certiorari is, under some circumstances, a fact which "cannot be overlooked." *Wells v. Meyer's Bakery*, 561 F.2d 1268, 1274-1275 (8th Cir. 1977). See also *United States v. Kras*, 409 U.S. 434, 443 (1973); *United States v. Thompson*, 685 F.2d 993, 999 (6th Cir.), *cert. denied*, 103 S. Ct. 494 (1982).

distinguishes it from existing plans. Neither this Court nor the district court placed any limitation on the number of students that could transfer under the plan in existence during the last two school years, nor were we requested to do so. Moreover, it was clear that the number of transfers would have to be large if the opportunity for an integrated education was to be provided to a significant number of the 30,000 black students that remained in the all-black schools in the city.

Notwithstanding our view that the issues regarding interdistrict transfers have been heretofore decided, we again reach the merits of the matter and, alternatively, hold that the plan and the funding order, as they relate to interdistrict transfers, meet constitutional standards.

*B. The District Court's Order With Respect to Interdistrict Transfers Meets Constitutional Standards.*

Since *Brown v. Bd. of Educ.*, 349 U.S. 294, 300 (1955) (*Brown II*), principles of equity have guided courts in devising remedies to eradicate segregation and its effects. Yet for equitable remedies to pass constitutional muster, they must conform to three overlapping criteria.

[First], the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. \* \* \* The remedy must therefore be related to "the *condition* alleged to offend the Constitution." \* \* \* Second, the decree must indeed be *remedial* in nature, that is, it must be designed as nearly as possible "to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." \* \* \* Third, the federal courts \* \* \* must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.

*Milliken v. Bradley*, 433 U.S. 267, 280-281 (1977) (*Milliken II*) (citations and footnotes omitted).

Examination of voluntary interdistrict transfers confirms that, as a remedy for an intradistrict violation, such transfers comply with constitutional standards.

1. The remedy was closely tailored to the nature and scope of the violation.

The Missouri Constitution requires the State to provide a free public education. Mo. Const. art. 9, § 1(a). The State supervises instruction, distributes funds for public education to local school districts, approves school bus routes, provides free textbooks, and passes on applications by school districts for federal aid. *See* Mo. Rev. Stat. §§ 161.092, 163.021, 163.031, 163.161, 170.051, 170.055; and *Liddell v. Bd. of Educ.*, *supra*, 469 F. Supp. at 1313-1314.

Before the Civil War, Missouri prohibited the creation of schools to teach reading and writing to blacks. Act of February 16, 1847, § 1, 1847 Mo. Laws 103. State-mandated segregation was first imposed in the 1865 Constitution, Article IX § 2. It was reincorporated in the Missouri Constitution of 1945: Article IX specifically provided that separate schools were to be maintained for "white and colored children."<sup>9</sup> In 1952, the Missouri Supreme Court upheld the constitutionality of Article IX under the United States Constitution. *See State ex rel. Hobby v. Disman*, 250 S.W.2d 137, 141 (Mo. 1952). Article IX was not repealed until 1976. *Adams v. United States*, *supra*, 620 F.2d at 1280. Under the segregated system, the State bused suburban black students from St. Louis County into the city's black schools to maintain the dual system. *Id.*, at 1281. The city schools remained largely segregated until this Court's decision in *Adams*.

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<sup>9</sup> In addition, state law provided separate libraries, public parks, and playgrounds "for the use of white and colored persons," Mo. Rev. Stat. 10474 (1939), and established separate "institutes for colored teachers," Mo. Rev. Stat. 10632 (1939).

It is clear from the foregoing that the State's presence in public education is immense and that the State's Constitution and statutes mandated discrimination against black St. Louis students on the broadest possible basis. It is equally clear that the discriminatory policies continued after the Supreme Court decided *Brown I*, *supra*, in 1954. Given the breadth of the State's violation, it was appropriate for the district court to mandate an equally comprehensive remedy. The potential for integration within the district, however, was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would probably result. With that in mind, the district court properly considered the alternative of voluntary transfers to county districts. The opportunity for effective integration became a reality when the county schools agreed to accept the voluntary transfer of several thousand black students.<sup>10</sup>

2. The remedy restores the victims of discrimination as nearly as possible to the position they would have occupied absent that discrimination.

We have heretofore enumerated the alternative remedies suggested by the parties, and we have explained why the district court selected a remedy which included voluntary interdistrict transfers and why this Court approved that remedy. (*See supra* pp. 25-26.)

We are met for the first time on this appeal with a new, or at least a more precisely framed, argument against interdistrict transfers. The State asserts that the district court cannot require the State to fund extensive

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<sup>10</sup> We also note that the remedial limits imposed by *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406 (1977), are inapposite to this case. The findings of *de jure* segregation which distinguish this case were absent in *Dayton*. In that case, the Supreme Court considered the proper scope of an equitable remedy for three isolated instances of discrimination.

interdistrict transfers unless the record supports and the district court finds that the black children of St. Louis would have attended schools in the county had it not been for the State's constitutional prohibition against black and white students attending schools together.<sup>11</sup> Nothing in the cases cited by the State<sup>12</sup> suggests or requires us to hold that the district court abused its discretion when it required the State to fund interdistrict transfers of students to consenting districts. Indeed *Milliken II* states that the remedy should correct conditions that "flow from such a violation" and should return victims "to the position they would have enjoyed in terms of education," but for the violation. *Milliken II*, *supra*, 433 U.S. at 282.

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<sup>11</sup> The United States joins in this argument. In earlier proceedings before this Court and the United States Supreme Court, however, it supported the district court's remedial use of voluntary interdistrict transfers. It argued that voluntary interdistrict transfers properly remedied the State's violation, distinguishing them from the overbroad remedy in *Milliken I*, which involved "imposition of relief upon nonparty school districts." It asserted that the district court can "order those who have been found liable to make efforts to *persuade* those nonparty districts to cooperate voluntarily." U.S. Brief in Opposition to State's Petition for Certiorari, *Missouri v. Liddell*, No. 80-2152, Aug. 17, 1971, at 14 (emphasis in original).

In a subsequent brief, the United States again distinguished the interdistrict transfers from the impermissible interdistrict remedy in *Milliken I*. Moreover, in endorsing interdistrict transfers, it stated that, under *Hills*, "the State parties can and should be required to take appropriate remedial action for the constitutional violations in which they participated." U.S. Brief in Opposition to the State's Petition for Certiorari, *Missouri v. Liddell*, No. 81-2022, April 30, 1982, at 7, 8.

<sup>12</sup> *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979) (*Dayton II*); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979); *School District of Omaha v. United States*, 433 U.S. 667 (1977); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406 (1977); *Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*); *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976); *Washington v. Davis*, 426 U.S. 229 (1976); *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).



This remedy does precisely that: It returns the largest number of victims to integrated schools and provides integrative opportunities and compensatory and remedial programs for those who cannot participate in the transfer plan. As the primary constitutional violator, the State is in no position to complain that some of the victims may elect to transfer to integrated schools in another school district that is willing to accept them.

In our view, *Hills v. Gautreaux* provides precedent for the remedy mandated by the district court. In that case, the Supreme Court considered a remedy against the United States Department of Housing and Urban Development (HUD) for discrimination in public housing in the City of Chicago. The United States Court of Appeals for the Seventh Circuit had reversed the district court's dismissal and ordered the district court on remand to enter summary judgment against HUD for violations of the Fifth Amendment and the Civil Rights Act of 1964 by knowingly sanctioning and assisting the Chicago Housing Authority's (CHA) racially discriminatory public housing program. *Hills v. Gautreaux*, *supra*, 425 U.S. at 291-292. Thereafter, the plaintiffs requested that the district court require HUD to provide public housing outside Chicago's city limits. The district court refused, holding that the wrongs were committed solely against city residents and within the city's boundaries.

On appeal, the Court of Appeals for the Seventh Circuit reversed and the Supreme Court affirmed. The Supreme Court stated:

We reject the contention that, since HUD's constitutional and statutory violations were committed in Chicago, *Milliken* precludes an order against HUD that will affect its conduct in the greater metropolitan area. The critical distinction between HUD and the suburban school districts in *Milliken* is that HUD has been found to have violated the Constitution. That violation provided the necessary predicate for

the entry of a remedial order against HUD and, indeed, imposed a duty on the District Court to grant appropriate relief. \* \* \* Our prior decisions counsel that in the event of a constitutional violation "all reasonable methods be available to formulate an effective remedy," *North Carolina State Board of Education v. Swann*, 402 U.S. 43, 46, and that every effort should be made by a federal court to employ those methods "to achieve the greatest possible degree of [relief], taking into account the practicalities of the situation." *Davis v. School Comm'rs of Mobile County*, 402 U.S. 33, 37. As the Court observed in *Swann v. Charlotte-Mecklenburg Board of Education*: "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

*Hills v. Gautreaux*, *supra*, 425 U.S. at 297 (emphasis added; citations omitted).

The Supreme Court then discussed *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*), and the limitation it imposed on the scope of the federal courts' equity powers. In *Milliken I*, the respondents alleged that the Detroit school system was racially segregated and they sought the creation of a unified school district as a remedy. Without finding constitutional violations by the suburban districts and without finding significant segregative effects in those districts, the district court ordered the consolidation of the Detroit school system with fifty-three independent suburban school districts. After the Court of Appeals for the Sixth Circuit affirmed this desegregation order, the Supreme Court reversed, holding that the order exceeded the district court's equitable powers: the courts must tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation." *Id.* at 744.

In evaluating the remedy in *Hills* according to *Milliken I*'s standards, the Supreme Court noted that nothing in

*Milliken I* "suggests a *per se* rule that the federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred." *Hills v. Gautreaux*, *supra*, 425 U.S. at 298 (footnote omitted). In *Hills*, the Supreme Court approved the remedy because it did not coerce uninvolved governmental units and because CHA and HUD had the authority to operate outside Chicago's city limits. *Id.*

Justification for requiring the State to fund transfers between city and county schools is stronger than the justification for the remedy in *Hills*. Its role in education is much broader than HUD's role in housing. See *supra* p. 30. In addition, the breadth, gravity and duration of the State's violation here was much greater. The violation scarred every student in St. Louis for over five generations and it gained legitimacy through the State Constitution and through the State's preeminent role in education. In following the Supreme Court's guidelines in *Hills*, we echo its conclusion concerning *Milliken I*. If we barred the use of interdistrict transfers solely because the State's constitutional limitation took place within the city limits of St. Louis, we would transform

*Milliken I*'s principled limitation on the exercise of federal judicial authority into an arbitrary and mechanical shield for those found to have engaged in unconstitutional conduct.

*Hills v. Gautreaux*, *supra*, 425 U.S. at 300.

3. The district court's order with respect to interdistrict transfers does not infringe on State or local government autonomy.

The Supreme Court in *Hills v. Gautreaux*, *supra*, 425 U.S. at 298, has interpreted *Milliken I* to mean that district courts may not restructure or coerce local governments or their subdivisions. This remedy does not threaten the autonomy of local school districts; no district

will be coerced or reorganized and all districts retain the rights and powers accorded them by state and federal laws. See *Hills v. Gautreaux*, *supra*, 425 U.S. at 305-306.

We also find unpersuasive the State's argument that funding this remedy will compel other budget cuts, which would interfere with the autonomy of state and local governments. If we accepted this argument, violators of the Constitution could avoid their remedial responsibility through manipulation of their budgets, leaving victims without redress. Simply put, parsimony is no barrier to a constitutional remedy; "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Watson v. Memphis*, 373 U.S. 526, 537 (1963).<sup>13</sup>

Interdistrict transfers between the city and the county schools may proceed pursuant to the settlement agreement, subject to the following exceptions:

- (1) No additional transfers will be permitted for the balance of the current school year. Such transfers would disrupt the education of students in both sending and receiving schools. Planning and recruitment may continue so that enrollment may reach the levels contemplated in the settlement agreement.

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<sup>13</sup> The district court's funding order poses no eleventh amendment problems. The State relies on *Edelman v. Jordan*, 415 U.S. 651, 663 (1974), to avoid its liability for a remedy that requires the expenditure of state funds where that remedy is allegedly overbroad. The Supreme Court in *Milliken II* applied the prospective compliance exception developed in *Ex Parte Young*, 209 U.S. 123 (1908), which "permits federal courts to enjoin state officials to conform their conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state treasury." *Milliken II*, *supra*, 433 U.S. at 289. After elucidating the three criteria discussed earlier, the Supreme Court in *Milliken II* found that the plan under review there was constitutional. The interdistrict transfer plan under consideration in this case conforms to the same three criteria.

(2) City-to-county transfers will be limited to a total of 6,000 students in the 1984-85 school year and to not more than 3,000 additional total transfers in each succeeding school year until the limit of 15,000 is reached. A shortfall of enrollment in one year may be made up in succeeding years.

(3) In the event the number of applicants for transfer exceeds the spaces available, priority shall be given to applicants who would otherwise attend an all-black school.

(4) In *Liddell V*, *supra*, 677 F.2d at 631-632, we warned of the need for vigilance to control the costs of desegregation. Budgetary constraints persist, and so does the need for frugality. We are unwilling, however, to accept the State's suggestion that "complementary zones" be established, which would effectively limit schools that transferees could attend. This would destroy the voluntary nature of the plan. Nevertheless, constant effort and careful planning must be made by all concerned to limit the costs of transportation, insofar as is consistent with the Constitution and the voluntary nature of the plan.

#### C. *County to County Transfers.*

Although we approve State funding of transfers of students between the city and county, we are unable to give similar approval to the funding of transfers of students between county districts. We emphasize again that the objective of transfers between the city and county is the eradication of segregation within the city. Such transfers are closely tailored to the violation and are clearly remedial with respect to that violation, according to the standards announced in *Milliken II* which were discussed above. Transfers between county districts, however, are not geared to remedy the violation found within the city. Nor does the record establish that intercounty

transfers will materially assist in desegregating the city schools.

We recognize that some suburban school districts have majority black enrollments and others have nearly all-white enrollments. We acknowledge that the suburban districts would achieve a further degree of desegregation by such transfers. We neither prohibit nor discourage such voluntary transfers between county schools but we cannot compel the State to pay for them absent a finding of an interdistrict violation.

### III. MAGNET SCHOOLS AND INTEGRATIVE PROGRAMS.

#### A. *Magnet Schools.*

The district court and this Court previously authorized the creation of magnet schools and integrative programs. About 8,000 students (one-half of whom were blacks) participated in these schools and programs in the 1982-83 school year. Three hundred participants resided in the county. No one suggests that the magnet schools or integrative programs be discontinued.

The settlement agreement approved by the district court provides for the expansion or replication of existing magnet schools and programs and the development of new magnet schools and programs—in both the city and the county—with total enrollment to reach 20,000 students, twelve to fourteen thousand to be enrolled in city magnets and the balance in county magnets. The new schools would be phased in over the 1983-87 period.

To be eligible for transfer to the magnet schools, students in good standing must be in the racial majority in their home districts and must meet the qualifications for the magnets. Special eligibility requirements allow white students from the city to attend city magnets if the students now attend schools that are less than ten



percent or over fifty percent white.<sup>14</sup> Black students in majority black districts are eligible to attend magnet schools and programs in other black majority districts if seats remain open after all of the host district's black students have been accommodated.

The State argues that insufficient attention has been devoted to developing a curriculum designed to attract county students. It also objects to being required to pay the full cost of building and operating the new magnets.

Before reviewing the State's specific arguments, we observe that the utility and propriety of magnets as a desegregation remedy is beyond dispute. In *Adams v. United States*, *supra*, 620 F.2d at 1296-1297, we evaluated the remedies we had previously found to be constitutionally permissible. We recommended "[m]aintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education." *Id.* at 1297. We reiterated our approval of magnet schools in *Liddell III*, *supra*, 667 F.2d at 658 (emphasis omitted), where, in considering an intradistrict remedy, we directed the city and suburban school districts to undertake a "study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the city. \* \* \* The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved." Finally, in *Liddell V*, *supra*, 677 F.2d at 642, we reaffirmed our conclusion that the district court could "require that additional magnet schools be established at state expense within the city or in suburban

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<sup>14</sup> Our affirmance in this case does not preclude the district court from reconsidering these special requirements—to the extent that they permit a white student attending a school with less than ten percent white enrollment to transfer to a city magnet school—in light of decisions by the Supreme Court and this Court. The district court may reconsider these requirements upon the request of any party.

school districts with the consent of the suburban districts where the schools would be located." As with interdistrict transfers, our previous determinations in this case concerning magnet schools are law of the case.

Had we not in our previous decisions explicitly examined and approved the use of magnet schools and programs, the weight of precedent would nevertheless oblige us now to approve their use. In *Milliken II*, *supra*, 433 U.S. at 272, the Supreme Court mentioned magnet schools as a supplement to the compensatory and remedial programs which it approved in that case. Dissenting in another case, Justice Powell observed that the Supreme Court in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, *supra*, 402 U.S. at 26-27, implicitly encouraged the use of magnet schools:

Incentives can be employed to encourage [majority-minority] transfers, such as creation of magnet schools providing special education benefits and state subsidization of those schools that expand their minority enrollments. \* \* \* These and like plans, if adopted voluntarily by States, also could help counter the effects of racial imbalances between school districts that are beyond the reach of judicial correction.

*Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 488 (1979).

This Court also approved magnets as a means of desegregating the Little Rock schools in *Clark v. Bd. of Educ. of Little Rock*, 705 F.2d 265, 269, 272 (8th Cir. 1983).

Courts of Appeals in several other circuits have also approved desegregation plans which include magnets. *Arthur v. Nyquist*, 712 F.2d 809, 811-813 (2d Cir. 1983); *Berry v. School District of Benton Harbor*, 698 F.2d 813, 819 (6th Cir.), *cert. denied*, 104 S. Ct. 236 (1983); *United States v. Texas Education Agency*, 679 F.2d 1104, 1110 (5th Cir. 1982); *Hart v. Community School*

*Bd. of Educ.*, 512 F.2d 37, 54-55 (2d Cir. 1975) (citing successful magnet programs in Boston, Massachusetts; Providence, Rhode Island; and Coney Island, New York); *Stout v. Jefferson County Bd. of Educ.*, 483 F.2d 84, 85 (5th Cir. 1973). District courts have also approved plans that include magnets. *Tasby v. Wright*, 520 F. Supp. 683, 741 (N.D. Tex. 1981), *aff'd in part, rev'd in part, on other grounds*, 713 F.2d 90 (5th Cir. 1983); *Smiley v. Blevins*, 514 F. Supp. 1248, 1260 (S.D. Tex. 1981). A survey of the literature reveals that magnets are being used in at least eighteen cities. Rossell, *Magnet Schools as a Desegregation Tool*, 14 Urban Education 303, 320 (1979).

Despite the widespread approval of magnet schools by the federal courts, critics maintain that magnet schools cannot correct the deep-seated evils of school desegregation. See, e.g., *Morgan v. Kerrigan*, 530 F.2d 401, 410 & n.10 (1st Cir.), *cert. denied*, 426 U.S. 935 (1976); *Bradley v. Milliken* 484 F.2d 215, 243 (6th Cir.), *rev'd on other grounds*, 418 U.S. 717 (1974); *Kelley v. Guinn*, 456 F.2d 100, 108-109 (9th Cir. 1972), *cert. denied*, 413 U.S. 919 (1973). Yet the criticisms in these cases generally apply to desegregation plans in which magnets are the principal tool in a "freedom of choice" plan. They function differently in the settlement agreement approved here by the district court. Magnet schools are a single element of the panoply of remedies approved by this Court and the district court. Like the magnet schools in *Stout v. Jefferson County Bd. of Educ.*, *supra*, 483 F.2d at 86, they are "part of a complex and many-faceted" plan. Magnets perform the salutary function of allowing "non-white as well as the white students so enrolled a chance to widen their horizons through the interplay of ideas and the absorption of diverse sub-cultural attitudes." *Hart v. Community School Bd. of Educ.*, *supra*, 512 F.2d at 54.

Magnet schools under this plan will be distinguished by the features that have made them successful in other

cities: individualized teaching, a low pupil-teacher ratio, specialized programs tailored to students' interests, enriched resources and active recruitment. See Rosenbaum and Presser, *Voluntary Racial Integration in a Magnet School*, 86 U. Chi. School Rev. 156, 156 (1978); Levine and Eubanks, *Attracting Nonminority Students to Magnet Schools in Minority Neighborhoods*, 19 Intergrat-eduction 52, 57 (1981). Because they are supplemented by the extensive program of interdistrict transfers and compensatory education, these magnets will not resegregate, nor will they create a dualistic system with elitist schools.

We do not believe that the district court erred in ordering the State to pay the full capital and operating cost of magnet schools. As we noted earlier, the State's status as a violator of the Constitution compels the district court to remedy the deprivations the State has caused. In *Liddell V, supra*, 677 F.2d at 642, we held that the State could be ordered to undertake as a part of its remedial responsibility the development of magnets. Now we reaffirm that conclusion.

While we approve magnet schools and affirm the district court's decision concerning their funding, we see merit in the State's argument that careful study and planning must precede replication or expansion of magnets. New magnet schools must be approved by the magnet Review Committee and the district court. The planning process should focus on those schools and programs that present a reasonable probability of attracting suburban white students; only those schools which demonstrate such probability should be approved. The new schools should be phased in over a period of four years as provided for by the settlement agreement. The total number of students enrolled in city magnet schools shall not exceed 14,000.

We impose an additional limitation on the development of suburban magnets. Although a panel of this Court ap-

proved the use of suburban magnet schools in *Liddell III*, *supra*, 667 F.2d at 658-659; and *Liddell V*, *supra*, 677 F.2d at 641-642, the Court en banc does not believe that the record sufficiently supports this development. The county districts may proceed on their own, of course, without state funding. Any black city students who transfer into county-funded magnet schools would count toward achieving the district's plan goal and would contribute to the district's final judgment. State fiscal incentives would include payments to districts sending transferees to county-funded magnets, but the State will not be required to pay the capital or operating costs of county magnet schools as such.

#### B. *Part-Time Integrative Programs.*

Part-time integrative programs are primarily intended to provide integrative learning experiences for students attending all-black schools. *Adams v. United States*, *supra*, 620 F.2d at 1296; *Liddell IV*, *supra*, 693 F.2d at 727; *Liddell V*, *supra*, 677 F.2d at 642. These programs have been, and should continue to be, an important element of the overall plan to integrate the city schools. In determining the need for continuing the existing programs, or developing new ones, the City Board and the Budget Review Committee must keep the above standard in mind. They must also recognize that the number of black students in nonintegrated schools will decline dramatically over the next four years. We thus approve the district court's decision insofar as it permits the continuance of part-time integrative programs and requires the State to pay full cost of the approved programs.

We do not, however, specifically approve the new or expanded programs or the dollar amounts for these programs listed in the proposed budget (items A.4.10, A.4.11, A.5.01, A.5.02, A.5.04, A.5.05, A.6.01, A.6.03, and A.6.04). We rather require the City Board to resubmit to the Budget Review Committee, discussed *infra* Section VI, a list of the new or expanded programs that they

would propose to implement. The total cost of these programs should not exceed \$1 million. Further, these programs must not duplicate any programs approved in the quality education section of this opinion. Any dispute that emerges between the City Board and the State concerning these programs should be submitted for resolution by the Budget Review Committee and the district court in light of this discussion.

#### IV. QUALITY EDUCATION IMPROVEMENTS.

The settlement plan approved by the district court includes compensatory and remedial programs to improve the quality of education throughout the St. Louis public schools and additional programs for the same purpose in the nonintegrated schools. The district-wide improvements include a reduction in class size; restoration of art, music, physical education, and extracurricular programs; creation of pre-school centers and all-day kindergarten programs; additional staff to address the needs of handicapped students; additional nursing and counseling staff; and expansion of library and other media resources and services. Administrative improvements include curriculum and staff development, evaluation and performance assessment, and enhanced long-range planning.

The additional improvements for the nonintegrated schools include a further class-size reduction in grades K through 8, to twenty pupils per teacher; additional remedial instruction time through after-school, Saturday, and summer school programs; parental involvement programs; and alternative education options for black students unable to attend magnet schools. Other programs address motivational need of students in the all-black schools by stimulating opportunities for student success and recognition, by introducing role models for academic achievement and by establishing student concerns committees to address the morale, attendance, and behavior issues which emerge during the implementation of the plan.



A. *Legal Precedent for Including Compensatory and Remedial Programs in Desegregation Remedies.*

This Court suggested the necessity for remedial and compensatory programs in *Adams v. United States*, *supra*, 620 F.2d at 1296, and reiterated that need in *Liddell V*, *supra*, 677 F.2d at 641-642. We thus approve them in principle as law of the case. *See supra* p. 28. Moreover, such programs have solid support in the case law as proper components of a desegregation remedy so long as they relate to the constitutional violation, are remedial in nature, and account for state and local autonomy. *Milliken II*, *supra*, 433 U.S. at 280-281.

In *Brown I*, the Supreme Court recognized that segregation harms black children by generating "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlike ever to be undone." *Brown I*, *supra*, 347 U.S. at 494. In light of this harm, federal courts have often required the inclusion of remedial programs in desegregation plans to overcome the inequalities inherent in dual school systems. *Milliken II*, *supra*, 433 U.S. at 283. *See, e.g., Arthur v. Nyquist*, *supra*, 712 F.2d at 811; *Oliver v. Kalamazoo Bd. of Educ.*, 640 F.2d 782, 789-790 (6th Cir. 1980); *Evans v. Buchanan*, 582 F.2d 750, 767-769 (3d Cir. 1978) (en banc), *cert. denied*, 446 U.S. 923 (1980); *United States v. Texas*, 447 F.2d 441, 448 (1971); *United States v. Jefferson County Bd. of Educ.*, 380 F.2d 385, 394-395 (5th Cir.), *cert. denied*, 389 U.S. 840 (1967); *Berry v. School Dist. of Benton Harbor*, 515 F. Supp. 344, 369-373 (W.D. Mich. 1981), *aff'd and remanded*, 698 F.2d 813 (6th Cir. 1983); *United States v. Bd. of School Comm'rs of Indianapolis*, 506 F. Supp. 657, 671-673 (S.D. Ind. 1979), *vacated in part on other grounds*, 637 F.2d 1101 (7th Cir.), *cert. denied*, 449 U.S. 838 (1980).

Such programs "assist students who previously attended all-Negro schools when those students transfer to formerly all-white schools. . . . The remedial programs

... are an integral part of a program for compensatory education to be provided Negro students who have long been disadvantaged by the inequities and discrimination inherent in the dual school system." *Milliken II*, *supra*, 433 U.S. at 284 (emphasis in original), quoting *Plaquemines Parish School Bd. v. United States*, 415 F.2d 817, 831 (5th Cir. 1969). Crucial to the Supreme Court's analysis in *Milliken II* is the concept that segregation not only inflicts harm on individual black students, but also builds "inadequacies [into the] \* \* \* educational system." *Milliken II*, *supra*, 433 U.S. at 284 (emphasis added). Thus, to remedy the effects of a dual system which operated for decades with the sanction of law, remedial efforts must also concentrate on *systemic* educational improvements.

A secondary remedial objective of the quality education improvements is to enhance the appeal of the city school system, thereby promoting the chances of a stable and successful voluntary desegregation plan. The exodus of white parents and students out of fear of integration, or "white flight," is no excuse for school officials to avoid desegregating. *United States v. Scotland Neck City Bd. of Educ.*, 407 U.S. 484, 491 (1972); *Monroe v. Bd. of Comm'rs*, 391 U.S. 450, 459 (1968). Yet, "there is a valid distinction between using the defense of white flight as a smokescreen to avoid integration," and addressing "the probability of white flight in attempting to formulate a *voluntary* plan which would improve the racial balance in the schools without at the same time losing the support and acceptance of the public." *Higgins v. Bd. of Educ.*, 508 F.2d 779, 794 (6th Cir. 1974) (emphasis in original); accord *Parent Ass'n of Andrew Jackson High School v. Ambach*, 598 F.2d 705, 719 (2d Cir. 1979). A child's enrollment in a particular school is the result of two decisions: the government's student assignment, and the parents' decision to stay, move, or send their children to private school. Thus, as Professor James Coleman insists, "government policies must, to be

effective, anticipate parental decisions and obtain the parents' active cooperation." Coleman, *New Incentives for Desegregation*, 7 Human Rights 10, 13 (1978). Improving the quality of integrated schools consequently promotes parental acceptance of desegregation, and promotes the remedy's success. Gewirtz, *Remedies and Resistance*, 92 Yale L.J. 585, 652-653 (1983). See also Russell & Hawley, *Policy Alternative for Minimizing White Flight*, 4 Educational Evaluation and Policy Analysis 205 (1982).

The quality improvements for the all-black schools serve a further remedial objective. A strong presumption exists against the constitutional propriety of one-race schools, *Swann v. Charlotte Mecklenburg Bd. of Educ.*, *supra*, 402 U.S. at 26, and any desegregation plan leaving one-race schools must be carefully scrutinized. *Id.*; *Lee v. Macon County Bd. of Educ.*, 616 F.2d 805, 809 (5th Cir. 1980). To overcome this presumption of unconstitutionality, a court must find that the existence of one-race schools is justified in light of the particular facts of the case and the feasibility of other desegregation techniques. *Armstrong v. Bd. of School Directors*, 616 F.2d 305, 321-322 (7th Cir. 1980); *Tasby v. Estes*, 572 F.2d 1010, 1014-15 (5th Cir. 1978). When no other feasible desegregation techniques exist, then specific remedial programs for students in the remaining one-race schools may be included as a means of ensuring equal educational opportunity. See, e.g., *Tasby v. Wright*, *supra*, 713 F.2d at 95-97; *Clark v. Bd. of Educ. of Little Rock*, *supra*, 705 F.2d at 272.<sup>15</sup>

The district court held extensive hearings on the fairness of the quality education component, with lengthy testimony from local and State education officials, a num-

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<sup>15</sup> The quality of an all-black school is also improved when students attend such schools voluntarily. See Coleman, *New Incentives for Desegregation*, 7 Human Rights 10, 14-15 (1978). The settlement plan recognizes this imperative in providing for voluntary interdistrict transfers.

ber of expert witnesses, and representatives of the other parties. After reviewing the evidence and the recommendations of the court-appointed financial advisor, the court concluded that the programs fell within the proper remedial scope:

The sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of a segregated school system. \* \* \*

In no way should any funding provisions presently authorized by the Court be construed to authorize expenditures unrelated to City Board's desegregation obligations under the Constitution and the Settlement Plan as approved.

*Liddell v. Bd. of Educ., supra*, 567 F. Supp. at 1051-1052.

B. *Analysis of the Compensatory and Remedial Programs Approved by the District Court.*

The position of the State before this Court with respect to the quality education programs is somewhat ambiguous. In its opening brief, it argued that the city and county schools had not agreed to a quality education package and that therefore the district court had nothing to approve.<sup>16</sup> It further asserted that

[t]he Quality Education [component] is not only essential from a contractual point of view but also from a constitutional standing. The 15,000 black children in north St. Louis who will not have the opportunity to transfer under the Plan are still vic-

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<sup>16</sup> Section IV of the settlement plan states:

[T]he St. Louis County School districts do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design.

tims of constitutional wrongdoing as found by the court. The Quality Education section of the Plan is virtually the only remedy available to those black children to redress their wrong. Without it they stand as victims without redress.

State's Opening Brief at 26-27.

It concluded by stating that the court did not have the authority to modify the agreement to include the quality education component.

In its reply brief, the State changed the focus of its argument and complained that the provisions requiring improvement in the quality of education in the integrated schools were only remotely related to desegregation. It continued to assert this position at oral argument.

The State is not a party to the settlement agreement. It thus lacks standing to question the validity of the agreement on its terms. *Warth v. Seldin*, 422 U.S. 490, 501 (1975); *Fisher v. Tucson School District No. 1*, 625 F.2d 834, 837 (9th Cir. 1980). Even assuming that the State has standing to raise such a question, the district court found that the parties had a meeting of the minds with respect to the essential terms of the agreement. This finding is not clearly erroneous.

The State clearly has standing, however, to challenge the district court's funding order and did so before that court. It renews that challenge here. It argues, in substance, that the court approved funding for general educational improvements in the integrated schools which were unrelated to desegregation.<sup>17</sup> Its argument here is

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<sup>17</sup> The State cites *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973), as support for the position that St. Louis students have no constitutional right to any particular level of education, but fails to note a critical distinction between *Rodriguez* and this case. *Rodriguez* held that property wealth is not a suspect class under the equal protection clause, and thus disparate educational expenditure levels between school districts were not a constitutional violation. Hence, the *Rodriguez* plaintiffs

twofold. First, the State contends that these programs may only be approved if the Court can find that they would have been a part of the city school system *but for* the past unconstitutional segregation. This position misreads the case law and ignores the reality of the harm imposed by segregated schools. The relevant inquiry is not whether, in absence of a *de jure* dual system, St. Louis schools would have had compensatory and remedial programs. None of the numerous cases cited above approving such programs rested on such a conclusion. The point is that compensatory and remedial education programs are necessary to remedy the effects of discrimination on the victims of segregation and the school system itself.

The second aspect of the State's argument is that there are no findings made by the district court, nor sufficient support in the record, to suggest that the quality education improvements are only *remedial* in nature.<sup>18</sup> The Second Circuit recently observed that the line between remedial purpose and general educational improvements unrelated to desegregation is inevitably blurred:

[A] court is entitled to require money for programs that materially aid to success of the overall desegregation effort. A program of that sort is not disqualified for needed funding simply because its in-

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had no constitutional right to a particular level of education. *Id.*

Our case unquestionably involves a suspect class (race), and an established constitutional violation (a *de jure* dual school system). As noted above, courts have repeatedly endorsed compensatory and remedial efforts to overcome educational inadequacies imposed by segregated schools, *Rodriguez* notwithstanding.

<sup>18</sup> To clarify, relating the remedy to the violation pursuant to *Milliken II* does not require a finding that *each* educational program at issue has in the past been "infected with the discriminatory bias of a segregated school system." *Evans v. Buchanan, supra*, 582 F.2d at 769, quoting *Milliken II, supra*, 433 U.S. at 275. It is sufficient to determine that the remedial program is directed to cure the general condition offending the Constitution.



clusion improves the overall quality of the school system. At the same time a court must be alert not to permit a school board to use a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation. Striking the balance necessarily requires considerable deference by a district court to the good faith representations of the school authorities \* \* \* and by a reviewing court to the knowledgeable assessment of a district judge intimately familiar with local conditions.

*Arthur v. Nyquist, supra*, 712 F.2d at 813 (citations omitted).

We think that the district court's order is fully supported as it relates to the quality improvements in the nonintegrated schools. Neither the State, the United States, nor the City specifically objects to these improvements. Moreover, they are consistent with the testimony of every expert witness that testified. The reduction in class-size was viewed by the witnesses for the black plaintiffs as critical to raising the achievement levels of black students. The programs designed to intensify remedial instruction, encourage parental involvement, and promote a positive learning climate reflect the objectives that the Supreme Court approved in *Milliken II*. See *Bradley v. Milliken*, 402 F. Supp. 1096, 1118-1119 (E.D. Mich. 1975), *aff'd and remanded*, 540 F.2d 229 (6th Cir. 1976), *aff'd*, 433 U.S. 267 (1977). The schools of emphasis assist in providing equal educational opportunity by providing alternative education options for black students unable to attend magnet schools. The motivational programs are designed to bring about productive attitudes towards learning, and are essential in the opinion of expert witnesses called by the black plaintiffs. See Haywood, *Compensatory Education*, 59 Peabody J. of Educ. 272, 274 (1982). Crain & Mahard, *How Desegregation Orders May Improve Minority Academic Achievement*, 16 Harv. C.R.-C.L. L. Rev. 693, 702 (1982).

Notwithstanding our affirmance in principle of the district court's order insofar as it relates to the all-black schools, we believe that the following modifications to the order should be made so that careful planning and effective implementation may proceed without disruption of the current school year:

(1) To the extent that any of the programs have been heretofore instituted, they may be continued. The remaining programs may be instituted at the beginning of the 1984-85 school year. The summer school program may be implemented for the summer of 1984.

(2) The reduction in class size from present levels to the 20:1 pupil-teacher ratio should be made over a period of four years beginning in 1984-85. The phased reduction recognizes that as many as 12,500 additional black students may transfer to county schools in the next four years, and that as many as 3,000 more black students may transfer to magnet schools during the same period. By coordinating the class-size reduction with the transfers, student and teacher disruption can be lessened and the construction or rehabilitation of school buildings to house the smaller classes minimized.

(3) The amount budgeted for item B.1.01, Coordination of Instruction, should be reduced by one-half. Evelyn F. Luckey, an expert witness for the Liddell plaintiffs, testified that the program could be successfully accomplished within the limits of the reduced amount.

(4) The schools of emphasis should be phased in over a two-year period beginning in 1984-85.

(5) Detailed planning for the programs in the all-black schools should continue so that the programs can be implemented on schedule.

We cannot fully agree with the district court's conclusion that all of the quality education improvements in all schools are closely related to the integration process. While we concur with the Second Circuit's view that a district court should show considerable deference to the good faith representations of the school authorities, and that we should show similar deference to the judgment of the district court, a review of the record leaves us with the firm conviction that the district court erred in approving many of the programs in the quality education budget.

We begin our analysis by indicating our areas of agreement with the district court. Initially, we believe there is strong support in the record for approving those programs necessary to permit the city schools to regain, and then retain, their Class AAA status. This standard is developed by the Department of Education of the State of Missouri. *See Handbook for Classification and Accreditation of Public School Districts in Missouri* (1980). Seventy-four percent of the children attending Missouri public schools attend schools that have this rating. *Missouri School Directory* (1982-83). The City Board was denied this rating because its classes were too large, it had too many uncertified teachers, it lacked counselors in the elementary grades, it did not provide art, music, and physical education in the elementary grades, and its library and media services were inadequate.<sup>19</sup>

Second, we find adequate support in the record for preschool centers (budget item A.4.01, \$811,000), and for planning and program development (a part of budget item A.1.01, \$585,000). Both of these programs are recommended by the State Department of Education, and

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<sup>19</sup> Since this Court's order of September 12, 1983, many of the changes necessary to gain a AAA rating have been implemented and the State has recently restored the AAA status to the city schools.

both have been shown to be closely related to the desegregation process.

Third, we find adequate support in the record for all-day kindergartens (budget item A.4.02, \$6,129,000); parental involvement (budget item A.8.05); desegregation planning (budget item A.8.13, \$41,000); long-range planning (budget item A.8.15, \$431,000); and public affairs (budget item A.8.06, \$184,000). The all-day kindergarten program serves several important compensatory and remedial objectives. Much of the testimony at the fairness hearings emphasized the importance of focusing desegregation efforts on the earlier grades, as younger children have developed fewer racial prejudices and differences in performance are narrower. See Hawley, *Effective Educational Strategies for Desegregated Schools*, 59 Peabody J. of Educ. 209, 214 (1982). The additional instruction time will also assist in building prerequisite skills for city pupils. The testimony also emphasized that many of the children came from single-parent families that did not provide them with the skills which would permit them to compete with other children at the first-grade level. See *Milliken II*, *supra*, 433 U.S. at 284. The all-day kindergarten program is an expensive one which must be implemented carefully if waste is to be avoided, and the full benefits of the program realized. We therefore direct that the program be phased in over a period of at least two years.

Parental involvement is similarly emphasized, both in the record and in the literature, as crucial to the success of the desegregation plan. See, e.g., Hawley, *Effective Educational Strategies for Desegregated Schools*, *supra*, at 212, 225-226. Because many students will not be attending their neighborhood schools as a result of the student transfers, special parent-staff seminars and other programs will be critical in developing and maintaining parental involvement. The changes involved in implementing the plan, and the future demographic and student

enrollment shifts, render long-range planning essential to the successful desegregation of the city schools. The public affairs program is essential to citizen awareness and acceptance of the plan.

In light of the foregoing discussion, we approve the district court's funding order insofar as it relates to programs necessary to the city schools to retain its AAA rating. While the record is not entirely clear as to precisely what programs the State required the City Board to institute to regain this rating, it appears that they are budget items A.2.01, library and media services; A.2.02, audio visual services; A.3.01, lower class size; and A.3.02, restoration of art, music, and physical education. It is the intention of the Court that these budget items be implemented only insofar as necessary for the city schools to retain their AAA status. Retaining this status does not include a further class-size reduction in the integrated schools. We also approve the following additional programs: preschool centers, planning and program development, all-day kindergarten, parental involvement, desegregation planning, long-range planning, and public affairs.

We cannot, however, find adequate support in the record for the remaining programs. All are desirable, but the City Board has not made the case that they are necessary to provide equal educational opportunities to the children of St. Louis, or are otherwise essential as remedial or compensatory programs.

*C. Capital Improvements in the Integrated and Nonintegrated Schools*

The settlement agreement describes the age and condition of the city schools: Generally, they are in a condition of old age, rapid deterioration, and extreme deferred maintenance. Thirty-four of the nonintegrated black schools and twenty-one of the integrated schools are over fifty years old. Nearly one-fourth of the building area in

the city schools is over seventy-five years old. Nearly one-half of the building area in the city schools is over sixty-five years old. More than two-thirds of the building area in the city schools is over fifty years old. At the fairness hearing, the district court heard uncontradicted evidence as to the condition of the city school facilities which paralleled that recited in the settlement agreement.

In the last twenty-four years, St. Louis voters have defeated thirteen proposed bond issues. The only bond issue to pass during this period was in 1962, and approval came only after resubmission to the voters. Significantly, both of the last two proposed bond issues were approved by a simple majority; the constitutional requirement of two-thirds voter approval, however, blocked passage of these issues.

At the fairness hearing, the State argued that more careful planning was required before renovation or new construction programs could be initiated, particularly in light of expected declining enrollment in the city schools. It also argued that the schools were in a deplorable condition because the City School Board had failed to maintain them over the years. It questioned whether certain items were properly included in the capital improvement budget, contending that they were routine maintenance items that should be funded exclusively by the City Board.

The district court's order and memorandum did not discuss the facility improvement program at length. It simply stated that

(b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools; [and]



(c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court will consider an appropriate order to obtain the funds deemed sufficient to meet the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools.

*Liddell v. Bd. of Educ.*, *supra*, 567 F. Supp. at 1056.

Pursuant to that order, the City Board formulated a building program with a total cost of \$127 million, with one-half of the total to be financed by the issuance of \$63.5 million in City Board bonds.

The bond issue was presented to the voters on November 8, 1983, and fifty-five percent of the voters approved the issue. Eighty-four percent of the voters in the predominately black wards voted for the issue, but sixty-five percent of the voters in the predominately white wards voted against it. The bond issue was defeated because it failed to receive a two-thirds majority.

On appeal to this Court, the State does not question either the need to improve facilities, nor its obligation to help pay for these improvements. In its opening brief, it argues that if the bond issue fails, the whole plan will fail for lack of funding because it is unfair to expect the State to pay the full costs of the improvements. It also renews its argument that, because the county schools failed to agree to a detailed building program, the settlement agreement as a whole must fail. Finally, it asserts that, in any event, the district court is without authority to enter an order requiring a tax levy to fund the City Board's share of the improvements. In its reply brief, the State simply states that the provision of the order requiring "extensive capital improvements" is "entirely out of proportion to the constitutional violations found by the District Court."

The district court did not err in holding that the State had an obligation to pay one-half of the costs of the capital

improvement program necessary to restore the city facilities to a constitutionally acceptable level, and we find no merit in the State's suggestion that the district court's order cannot stand because the county districts failed to agree to the details of the facilities improvement program. *See supra* pp. 49-50.

There is merit to the State's argument that more careful and detailed planning should precede action by the district court and that this planning should identify the projects to be undertaken, establish the cost of each project and set a more specific schedule for the improvements. Planning and scheduling are particularly important in view of the expected decline in enrollment.

On remand, therefore, the City Board should promptly identify the projects to be undertaken, estimate the cost of each project, and set a reasonably detailed schedule for the completion of each project. The projects having the highest priority must be scheduled for completion at the earliest possible date. To that end, the City Board should consider the desirability of a referendum on a bond issue which can be initiated at a very early date and a subsequent bond issue for those projects to be built in later years. The State will pay one-half of the cost of preparing the detailed plans and schedules.

As soon as the City Board has prepared the new plans, estimates, and schedules, it shall submit them to the Budget Review Committee, discussed *infra* Section VI, and then to the district court. When the district court has approved them, a new bond issue shall be submitted to the voters. If it is defeated again, the district court shall determine how the improvements will be funded. *See infra* Section V.

## V. FINANCING DESEGREGATION IN ST. LOUIS CITY SCHOOLS.

In November, 1982, Missouri voters approved a referendum (Proposition C) which directed local school officials to reduce their operating levies by an amount equal to

fifty percent of the revenues local school districts would receive under a one-cent increase in the state sales tax. Mo. Rev. Stat. § 164.013 (Supp. 1983). In its July 5, 1983, order, the district court enjoined this rollback of local real estate taxes, *Liddell v. Bd. of Educ.*, *supra*, 567 F. Supp. at 1056, and directed the Board of Education to use this money to fund the quality education programs necessary to restore the St. Louis schools to their AAA status. In our en banc order of September, 1983, we sustained the district court's injunction of the rollback on equitable grounds, for the injunction was already in place, and reversal at that time would have seriously disrupted St. Louis's system of school finance. *Liddell VI*, *supra*, 717 F.2d at 1182-1184. We sustain the injunction against the rollback for the balance of this school year for the same reason. The equitable nature of that decision obliges us now to examine the propriety and the merits of the district court's injunction of the rollback with respect to years beyond 1983-84. We also consider the district court's authority to order a further increase in property taxes to fund operating expenses or capital improvements.

We hold that the district court's broad equitable powers to remedy the evils of segregation include a narrowly defined power to order increases in local tax levies on real estate. Limitations on this power require that it be exercised only after exploration of every other fiscal alternative.

The district court's use of broad equitable powers concerning school desegregation costs has been approved by previous opinions of the Supreme Court. Thus, it has declared that, when predicated on a right and a violation, "the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility, are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, *supra*, 402 U.S. at 15. These

powers subsume a broad range of ideas and tactics: equity assures that "all reasonable methods be available to formulate an effective remedy." *North Carolina State Bd. of Educ. v. Swann*, 402 U.S. 43, 56 (1971). These powers may also be applied broadly "to achieve the greatest possible degree of [relief] taking into account the practicalities of the situation." *Davis v. Bd. of School Comm'rs of Mobile County*, 402 U.S. 33, 37 (1971).

In *Griffin v. School Bd. of Prince Edward County*, 377 U.S. 218 (1964), the Supreme Court acknowledged that the district court may order an increase in taxes to fund schools where the State has defaulted on its obligation to provide an equal educational opportunity to all students. The Court did not limit the scope of its holding by ordering a return to the previous tax levy or procedures. It indicated only that the tax must be "necessary to prevent further racial discrimination" and that it must "raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system." *Id.* at 233.

In *United States v. Missouri*, 515 F.2d 1365 (8th Cir.), cert. denied, 423 U.S. 951 (1975), this Court also acknowledged the district court's remedial power to require a tax levy in excess of that authorized by the voters. When the district court ordered the consolidation of three St. Louis suburban school districts with disparate tax rates (\$3.80, \$4.97 and \$5.38), it concluded that a uniform tax rate higher than any of the three (\$6.03) would be necessary "to effectively operate the desegregated district," *id.* at 1371, and that "[t]his rate, inclusive of the amount necessary to service the total debt of the enlarged district, shall be deemed to have been approved by the voters for the purposes of Article 10, section 11(c), Missouri Constitution." *Id.* at 1372. In setting that rate, the district court also noted that "there was no reasonable possibility that such a tax levy would be approved by the required two-thirds vote in the aftermath of the desegregation order." *Id.* at 1371-1372.

On appeal, this Court sitting en banc unanimously approved a rate of \$5.38, the highest rate of the three districts. Judge Stephenson, writing for the full Court, stated:

It is anomalous to suggest that the district court has the power to disestablish a dual school system but does not have the power to fashion an appropriate remedy. In *North Carolina State Board of Education v. Swann*, 402 U.S. 43, 45 \* \* \*, the court stated:

[I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

We have likewise held in ordering implementation of a school integration plan that "the remedial power of the federal courts under the Fourteenth Amendment is not limited by state law." *Haney v. County Board of Education of Sevier County*, *supra*, 429 F.2d at 368 \* \* \*.

We are satisfied that the district court had the authority to implement its desegregation order by directing that provision be made for the levying of taxes essential to the operation of the new school district. It is our view, however, that deference should be given to the plan submitted in good faith by the state and county officials and which was largely accepted by the court. It was the view of the state that with the receipt of anticipated funds through action of the legislature the present Ferguson rate would be adequate. Maximum consideration should be given the views of the state and local officials concerned so long as they appear compatible with the goals to be achieved. The maximum rate in the new district should be reduced to \$5.38 per hundred.

*Id.* at 1372-1373 (citations and footnote omitted).



The City cites *Evans v. Buchanan*, 582 F.2d 750 (3d Cir. 1978) (en banc), for the proposition that the district court is without authority to order a tax increase to fund a court-imposed desegregation plan. The decision cannot be so construed. Indeed, the court en banc, relying on *Griffin*, made clear that the district court had that authority: had the State allocated "no funds, or substantially insufficient funds, to operate the remainder of the school system, such action by the State would clearly be unacceptable as interfering with the operations of the desegregation decree." *Id.* at 780. In addition, in *Evans*, the district court had acted before the "obvious inherent political safeguards \* \* \* [were] permitted to run their course." *Id.* Our instructions on remand are entirely consistent with *Evans* because the district court must defer to the political funding process before it may consider ordering a tax increase. We read *Evans* for the proposition we stated at the outset of this discussion: a district court may require an increased tax levy, but only where necessary to remedy a violation of the Constitution, and only after exhausting all other alternatives.

The City and State also cite *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), in arguing that the courts should defer to the legislative expertise of state and local governments. That case is also distinguishable. It involved an equal protection challenge of Texas's use of the property tax for funding education. The appellants claimed that this system of taxes *per se* was discriminatory because it raised disparate revenues in different school districts according to disparities in the assessed valuation of property within the districts. The Supreme Court found no suspect class affected and no fundamental rights at stake. Instead, it relied on the "rational basis" test and deferred to legislative expertise in fiscal matters. On the other hand, in this case, the City Board and State have both been adjudged constitutional violators in matters involving a suspect classification. Moreover, in this case, no one chal-



lenges the mechanics of the tax system, which was the central issue in the passage from *Rodriquez* that the State cited.<sup>20</sup>

Our conviction that the district court's equitable power includes the remedial power to order tax increases or the issuance of bonds finds support in the case law surrounding the contracts clause of the United States Constitution. U.S. Const. art. 1, § 10, cl. 1. The Supreme Court has recognized that a municipality's contractual obligations cannot be impaired solely because state law restricts its powers to tax in order to meet those obligations. When the City of New Orleans raised such an argument in an attempt to avoid its debts owed to the receiver of a metropolitan police board, the Court had no trouble holding that the courts could require "the city to pay over the taxes for which the judgment was rendered, or to levy and collect a tax therefor for the benefit of the relator as receiver." *Louisiana ex rel. Hubert v. Mayor and Council of New Orleans*, 215 U.S. 170, 181 (1909).

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<sup>20</sup> The State relies on several older cases to argue that the district court may not order a tax levy to satisfy a judgment against a municipality. Each of these cases arose in a commercial context. In *United States v. County Court of Clark County*, 95 U.S. (5 Otto) 769 (1878), a bondholder sought a court-ordered tax levy to pay interest coupons for years preceding the year the bonds were issued. The Court declined to levy taxes because until the bonds were issued, the county had no obligation and no authority to levy the taxes. *Rees v. City of Watertown*, 86 U.S. (19 Wall.) 107 (1874), and *United States v. County Court of Macon County*, 99 U.S. 582 (1879), involved bondholders requesting court-ordered levies to pay for bond defaults. In both cases, the Court declined, holding the remedy barred by statutes in existence at the time contracts of indebtedness were formed. Since the statutes became, by implication, a part of the contract, they precluded the use of the taxing remedy. Finally, in *Citizens' Savings and Loan Ass'n v. Topeka*, 87 U.S. (20 Wall.) 655 (1875), the Court declined [sic] to order a tax levy to pay for a default on bonds issued by a local corporation aided by the city. The Court reasoned that the tax would not have been lawful because it would not have been levied for a public purpose.

See also *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 103 S. Ct. 697, 705 n.14 (1983) ("When a State itself enters into a contract, it cannot simply walk away from its financial obligations."); *United States Trust Co. v. New Jersey*, 431 U.S. 1, 24 (1977) ("[T]he taxing power may have to be exercised if debts are to be repaid. Notwithstanding these effects, the Court has regularly held that the States are bound by their debt contracts." [Footnote omitted.]).

Similarly, courts have recognized that municipalities may not avoid their liability in tort by pleading constitutional or statutory debt limitations. *Wichita Finance and Thrift Co. v. Lawton*, 131 F. Supp. 788, 790 (W.D. Okla. 1955); *State ex rel. Martin v. Harris*, 75 N.M. 335, 115 P.2d 80, 83 (1941); *Raynor v. King County*, 97 P.2d 696, 708 (Wash. 1940); *City of Catlettsburg v. Davis' Administration*, 262 Ky. 726, 91 S.W.2d 56, 59-60 (1936); *Town of Flagstaff v. Gomez*, 242 P. 1003, 1004 (Ariz. 1926); *City of Long Beach v. Lisenby*, 179 P. 198, 200 (Cal. 1919) (taxes in such cases can be raised beyond their legal limits by the courts "without a vote of the people of said city.").

We turn to an evaluation of the district court's July 5, 1983, order in light of the foregoing discussion. We initially note that the district court declined to order an increase in real estate levies for operating purposes until the need for such revenues had been clearly demonstrated. It also declined to order a tax increase to fund capital improvements until such time as a bond issue of an amount determined by the City Board as sufficient to meet the most pressing capital improvement needs of the Board's constitutional obligation to desegregate had been submitted to the voters. It acted properly in both respects.

It went on, however, to authorize and direct the City Board to not reduce its operating levy as required by Mo. Rev. Stat. § 164.013 (Proposition C), and to direct the State to refrain from withholding from the City Board

funds that it would otherwise withhold pursuant to the same statute. It required that the revenue realized be utilized to fund the desegregation plan. It stated that any revenue thus retained but not necessary to fund the City Board's constitutional obligation should be applied to reduce its operating levy on July 1, 1984.

In our view, this order was deficient in that it was not accompanied by a factual finding by the district court that all other fiscal alternatives were unavailable or insufficient. We are unwilling to read such a finding into the record even though the record reveals that the City Board has little or no budget surplus, federal aid for desegregation has been cut, real estate values in the district have risen only slightly in recent years and referenda to secure additional funds have been largely unsuccessful.<sup>21</sup> On remand, the district court must allow the roll-back under Proposition C to take effect for the 1984-85 school year unless it finds that no other alternatives are available or sufficient to finance its desegregation order. In addition, it shall not require any additional levy unless it makes similar findings.

Specifically, the district court should, first, promptly determine the amount of money that will be required in 1984-85 to fund the desegregation order and it should subsequently determine the funds necessary for each of the succeeding years. Second, the district court should determine whether the City Board is able, with its own resources, to fund its share of the costs. In making this determination, the district court shall consider the reduced budgetary pressures that will result from the transfer of nearly 6,000 students from city to county

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<sup>21</sup> Since 1970, five referenda have been submitted to the voters to increase the authorized operating levy. While one requested increase passed in 1976, the remainder failed even though three of these remaining four received a majority vote. We note, however, that an increase of \$.25 per \$100 of assessed valuation in the current operating levy could be approved by a simple majority of the voters. Mo. Const. art. 10, § 11(c).

schools in 1984-85, and from the transfer of an additional 9,000 students in the following three years. In addition, the district court shall consider the effects of students transferring to magnet schools and of the City Board's receipt of transfer payments under the settlement agreement for sending students to county schools. Third, if the district court determines that the City Board lacks resources sufficient to fund its share of the desegregation order, it shall consider alternative sources of revenue. These alternatives include, but are not limited to: submission of a referendum to the voters for an increased operating levy; or authorization of the City Board by the State legislature to impose non-real estate taxes within the city. Fourth, if the voters refuse to approve a higher tax levy, or if the legislature fails to authorize the City Board to raise taxes from non-property tax sources, or if the City Board and the State, as joint tortfeasors, are unable to agree on an alternate method of raising the City Board's share of the cost, the district court shall conduct an evidentiary hearing and thereafter enter a judgment sufficient to cure the constitutional violations which we have found in a manner consistent with this and prior opinions.

## VI. BUDGET REVIEW COMMITTEE.

The settlement agreement, the district court's funding order and opinion, and this Court's opinion have established detailed guidelines for desegregating the city schools over the next four years. The agreement provides for a number of committees to assist in desegregation. They include the Desegregation Monitoring and Advisory Committee, the Magnet Review Committee, and the Voluntary Interdistrict Coordinating Council. The function of the latter committee is to coordinate and administer the student transfers, the voluntary teacher exchanges and the part-time education programs. A Recruitment and Counseling Center has also been established. Each of these committees and the Center fulfill important functions

in the desegregation process and may be continued and funded in accordance with the settlement agreement at the discretion of the district court.

The district court also outlined the budgeting procedures that would be followed:

11. For the effective and timely implementation of the Settlement Plan, as approved, the following budgeting procedure shall apply with regard to all actual and reasonable costs, except transportation costs and costs incurred for the student transfer payments made to sending and receiving districts, incurred pursuant to the approved Plan:

(a) each participating school district shall deliver to State defendants a proposed budget for all desegregation programs and activities intended for implementation pursuant to the Settlement Plan[.] \* \* \* For \* \* \* fiscal [year 1984-85 and subsequent years], the budgets shall be delivered to the State on or before March 1 of the preceding fiscal year;

(b) the budget for the VICC and for the Recruitment and Counseling Center (RCC) shall be filed with the Court and submitted to the State on or before \* \* \* March 1 of the preceding fiscal year;

(c) on or before [March 15 of each preceding fiscal year], representatives of the State and of each participating district shall identify in writing their areas of agreement and disagreement relating to budgetary matters. \* \* \* After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration.

[T]he State shall submit in writing any objections to the budget for the VICC and for the RCC \* \* \* on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint state-



ment of budgetary matters then remaining in dispute for the Court's consideration;

(d) the Court's financial adviser may participate in the budget meetings between the State and the various representatives, and may present comments on the budgets to the Court either in writing directly, or at any subsequent hearing that may be required; and

(e) for the 1983-1984 fiscal year, any budget disagreements that remain, after the required meetings and reports, will be referred to United States Magistrate David D. Noce for a hearing on or before August 5, 1983. For subsequent fiscal years, the Court will consider any remaining disputed budget issues in a manner the Court deems appropriate.

*Liddell v. Bd. of Educ., supra*, 567 F. Supp. at 1057.

We believe that the budgeting process is deficient in three respects: (1) it fails to require long-range budgeting; (2) it does not give the State, the principal funding source for the plan, an adequate role in the budgetary process; and (3) it fails to provide an effective method of resolving budgetary disputes before they reach the district court. As a result, that court must spend an inordinate amount of its time resolving disputes that should be resolved by the parties.

We direct that a small budget committee be named, consisting of two representatives of the State of Missouri, one representative from the city schools to be selected by the City Board, one representative to be jointly selected by the Liddell and Caldwell plaintiffs, and a court-appointed expert in school financing at the earliest possible date. The court-appointed expert shall serve as chairman of the committee. Its responsibilities will be determined by the district court but will include:

(1) Preparing, with the cooperation from the participating school districts, a budget for the 1984-85



school year through the 1987-88 school year for each element of the desegregation plan (including capital requirements and updating that budget on an annual basis). These budgets should reflect the best current estimates that can be made of the probable cost of the plan for each of the next four years. The budgets will permit the State and the City Board to anticipate the funds that will be required to fund the plan. They will also force the participants to consider at an early date the dramatic changes that will occur in the city schools' student population in the integrated and nonintegrated schools and magnet schools, and will assist in the effort to control costs.

(2) Receiving the annual budgets prepared by the participating school districts on the same date that the budgets are to be received by the State. The State and each participating district will identify, in writing, their areas of agreement and disagreement relating to budgetary matters at a time to be determined by the court on the recommendation of the Budget Committee. The Budget Committee will make every effort to resolve differences as to the budget in accordance with the principles set forth in the settlement agreement, the district court's order and this opinion. Any unresolved disputes will be promptly presented to the district court with the recommendations of the court-appointed expert. The district court will resolve any disputes. This resolution is not an appropriate task for a United States Magistrate. The number of disputes should be dramatically reduced if the parties participate in good faith in the procedure outlined. The district court will enter an appropriate order with respect to the funding of the Budget Committee.

## VII. OTHER ISSUES.

Several issues raised by various parties remain for resolution by this Court. We hold the following:

A. *St. Louis Teachers.*

The district court did not err in denying the St. Louis Teachers Union Local 420 the right to intervene in these proceedings. The Union has, however, timely raised its interest in seeking preferential hiring rights for black city teachers in county school districts, and this interest is sufficient to allow its intervention in future proceedings. *See Fed. R. Civ. P. 24.*

We note further that the settlement plan contains annual hiring goals for black teachers and administrators in the county schools. Implementation of these goals requires only nominal monetary support from the State, and provides significant benefits to the county districts and the black plaintiffs. We approve this section of the settlement plan.

B. *North St. Louis Parents.*

The North St. Louis Parents and Citizens for Quality Education argue that the district court erred in approving the settlement plan because it sacrifices the interests of the black students who will remain in the all-black schools for the interests of the black students who will transfer to county schools. They base their argument on the fact that the amount of state funding for students who opt to bus to county schools greatly exceeds the amount of state funding to compensate students who remain in neighborhood all-black schools.

As we have discussed, *supra* p. 47, equal educational opportunity for students remaining in one-race schools is a crucial concern in examining a desegregation remedy. The settlement plan contains significant quality improvements for the all-black schools, and we have approved these programs with minimal limitations. We find no evidence in the record to support the claim that the interests of students attending the all-black schools are being slighted. As we see the record, black students will now have several alternatives: attend their neighbor-

hood school, attend an integrated school in the city or county, or attend a magnet school.

Both the North St. Louis Parents and the City argue that the district court failed to provide adequate notice to potential class members. We hold that the district court did not err in this regard. Nor did it deprive the North St. Louis Parents as class members of due process by failing to respond in detail to their objections to the settlement plan. The district court's opinion reveals that it engaged in a reasoned examination of objections raised by class members concerning whether the plan is fair, reasonable and adequate. *Liddell v. Bd. of Educ., supra*, 567 F. Supp. at 1042-1047.

C. *The City's Petition for a Writ of Prohibition, and Its Other Remaining Objections.*

In our recent en banc order, we reserved a ruling on the City's petition for a writ of prohibition until we considered the merits on appeal. *Liddell VI, supra*, 717 F.2d at 1184. For the reasons discussed above, *supra* pp. 59-66, concerning the City Board's property tax rate, we deny the writ.

For reasons discussed throughout this opinion, we hold that the district court did not fail to evaluate the settlement agreement properly; we thus dismiss the City's objections on this point. The City argues further that the district court erred in denying or limiting cross-examination of experts at the fairness hearing. We find no abuse of discretion by the district court in this regard. *See Fed. R. Evid. 611.*

D. *Final Judgment for the County School Districts.*

We specifically approve the settlement agreement insofar as it relieves the participating county school districts of liability if they meet the goals set forth in the settlement plan within five years.

We have considered all other arguments and find they have no merit.

### CONCLUSION

The judgment of the district court is affirmed in part and reversed in part, and this matter is remanded to the district court for action consistent with this opinion. The City Board, the City of St. Louis, the North St. Louis Parents and Citizens for Quality Education, and the St. Louis Teachers Union Local 420 will each bear their own costs on appeal. All other costs of appeal shall be taxed to the State of Missouri. The mandate of this Court will issue forthwith.

JOHN R. GIBSON, Circuit Judge, concurring in part and dissenting in part.

The Court today approves a settlement which in great part requires funding by the State of Missouri. The State of Missouri was not a party to this settlement. In the litigation before us the State has been found to be a constitutional violator insofar as there is an intradistrict constitutional violation within the City of St. Louis. The Court today improperly requires the State to fund a remedy far broader than this constitutional violation, an admittedly interdistrict remedy involving not only the schools in the City of St. Louis but the schools in St. Louis County. Accordingly, I must dissent in part.

It is necessary that we first determine what this Court has found to be the constitutional violations by the State of Missouri and then consider the nature of the remedy that may be employed in such circumstances.

#### I.

Even though this case has been before this Court on four earlier occasions, the nature of the constitutional violation by the State of Missouri has been outlined only most generally. In our most recent opinion, *Liddell v.*

*Board of Education of City of St. Louis*, 677 F.2d 626 (8th Cir. 1982) (*Liddell V*), *cert. denied*, — U.S. —, 103 S. Ct. 172 (1983), the panel, speaking through Judge Heaney stated:

We held in *Adams* that the state had substantially contributed to the segregation of the public schools of the City of St. Louis. No appeal was taken from that decision by the state. That decision has been settled and will not be reopened.

677 F.2d at 629. The Court there referred to the 1981 decision, *Liddell v. Board of Education of City of St. Louis*, 667 F.2d 643 (8th Cir.) (*Liddell III*), *cert. denied*, 451 U.S. 902 (1981), where the panel, again speaking through Judge Heaney stated:

The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its actions did not violate the Constitution. . . .

This contention is wholly without merit. In our March 3 opinion, we specifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams v. United States*, *supra*, 620 F.2d at 1295 n.28. These statements amount to a clear reversal of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so.

667 F.2d at 654.

These opinions referred to the earlier en banc decision in *Adams v. United States*, 620 F.2d 1277 (8th Cir.),

*cert. denied*, 449 U.S. 826 (1980). In *Adams*, the Court held that the district court had erroneously concluded that the Board of Education had discharged its duty to desegregate the St. Louis school system by adopting a neighborhood school plan and refraining from discriminatory actions thereafter and that factors over which the Board of Education had no control were responsible for today's segregation in the St. Louis school system. *Adams*, 620 F.2d at 1291. The Court observed that most schools in north St. Louis were black in 1954 and remained black and that most schools in south St. Louis were white in 1954 and remained white. The Board had not dealt with the problem in 1954 to 1956 by developing a plan that would integrate the schools in north and south St. Louis. The Court concluded: "We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation." *Id.* *Liddell III & V* refer to the discussion on pages 1294 and 1295 in *Adams*, and footnotes 27 and 28. Testimony of Dr. Orfield that an interdistrict remedy funded by the State of Missouri would have the best chance of permanently integrating the schools in metropolitan St. Louis was discussed, together with the pre-*Brown* practices of both the St. Louis suburban school districts and those of the City of St. Louis to maintain segregated schools. The costs of the desegregation plan were to be apportioned among the defendants as determined by the district court.

It is evident that this discussion in *Adams* is dealing with the St. Louis City school system. The Board was directed to develop a system-wide plan for integrating the elementary and secondary schools. The Court remanded "to the district court with instructions to take those steps necessary to bring about an integrated school system" in accordance with certain guidelines and timetables set out. *Adams*, 620 F.2d at 1295. Cooperative transfers with suburban districts in St. Louis County were discussed.



This discussion in *Adams* does not address the question of interdistrict violation or interdistrict remedy.

This conclusion is fortified by the suggestion in *Liddell V* that "the interdistrict liability proceedings previously severed from the remainder of the case be postponed until after . . . an order in the pending 12(c) proceeding" and that "the interdistrict liability aspect should then proceed promptly thereafter." 677 F.2d at 642. The district court and this Court have not to this time made findings or conclusions of interdistrict violation.

*Liddell V* made the following reference with respect to the State defendants:

[T]hey are primary constitutional wrongdoers and, therefore, can be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district.

677 F.2d at 630.

The decision discussed the voluntary participation of suburban schools and the preparation and submission of feasibility plans for interdistrict desegregation involving city and suburban schools. 677 F.2d at 641.

Following *Liddell V*, the district court commenced its preparation for trial of the interdistrict issues, but before the trial could proceed and findings on the interdistrict violation and remedy issues could be made, the settlement now before the Court was achieved, with the State not participating. From this history the only conclusion that we can reach is that the constitutional violation found on the part of the State and the City of St. Louis is failure to take necessary actions to desegregate the schools in the City of St. Louis and particularly to desegregate the schools on a system-wide basis, including the predominantly white schools in south St. Louis and the predominantly black schools in north St. Louis.

## II.

The scope of remedy available once a constitutional violation has been found has been discussed by the United States Supreme Court most recently in *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 49 L.Ed.2d 599 (1976), in which the Court speaking through Justice Rehnquist stated:

[I]n *Swann* the Court cautioned that "it must be recognized that there are limits" beyond which a court may not go in seeking to dismantle a dual school system. *Id.*, at 28, 28 L.Ed.2d 554, 91 S Ct 1267. These limits are in part tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation, for "[a]bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis." *Ibid.*

427 U.S. at 434. The district court order in *Pasadena* was set aside, the Court finding that there was no showing that the post-1971 changes in the racial mix of the Pasadena schools was caused by segregative actions chargeable to the defendants, pointing to changes in the demographics of Pasadena's residential patterns. 427 U.S. 435-36.

The principles limiting available remedies were outlined in *Hills v. Gautreaux*, 425 U.S. 284, 47 L.Ed.2d 792 (1976). The Court there reviewed the earlier decision in *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*). It pointed to the fundamental limitation on the remedial powers of the federal courts to restructure the operation of local and state government, and explained that that power may be exercised only on the basis of constitutional violation. *Hills, supra*, 425 U.S. at 293, 47 L.Ed.2d at 801. The Court stated that

[o]nce a constitutional violation is found, a federal court is required to tailor "the scope of the remedy"

to fit "the nature and extent of the constitutional violation." In *Milliken*, there was no finding of unconstitutional action on the part of the suburban school officials and no demonstration that the violations committed in the operation of the Detroit school system had had any significant segregative effects in the suburbs. (Citations omitted.)

425 U.S. at 293-94.

*Hills* discussed the conclusions in *Milliken I* in detail as we have demonstrated above. Further limits established by *Milliken I* are as follows:

The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. *Swann*, 402 US, at 16, 28 L Ed 2d 554. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.

418 U.S. at 744-45.

The Supreme Court more recently in *General Building Contractors Ass'n v. Pennsylvania*, — U.S. —, —, 102 S.Ct. 3141, 3154 (1982), has held that judicial remedial powers of the federal court can "be exercised only on the basis of a violation of the law and . . . [can] extend no farther than required by the nature and extent of . . . [the] violation."

From this discussion it is apparent that the issue before this Court is what measures are tailored to fit the scope and nature of the State's constitutional violation. As we have seen, that constitutional violation is at most intradistrict in nature and, specifically, the failure to take measures to desegregate the St. Louis school system, particularly the north and south sides of that system. There is no hint of a finding that there was an interdistrict effect flowing from this intradistrict violation.

Under these principles the intradistrict violations found are insufficient to require the interdistrict remedy agreed to by all of the parties except the State of Missouri, and to impose the cost of this remedy on the State of Missouri. Because there are no findings by the district court as to the extent of the remedy required, this Court should not give its approval to a settlement placing substantial funding responsibility on the State of Missouri.

The Supreme Court in *Hills* concluded that selection of sites for public housing in the City of Chicago by HUD justified a remedy beyond the City of Chicago's territorial boundaries. The reasons for the conclusion were discussed as follows:

Here the wrong committed by HUD confined the respondents to segregated public housing. The relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits. . . . An order against HUD and CHA regulating their conduct in the

greater metropolitan area will do no more than take into account HUD's expert determination of the area relevant to the respondents' housing opportunities and will thus be wholly commensurate with the "nature and extent of the constitutional violation." (citation omitted.)

425 U.S. at 299-300.

*Hills* does not justify the conclusion reached by this Court. In *Hills* HUD had made an expert determination that the Chicago area and not simply the City of Chicago was the relevant area. The wrongful act of HUD was confining the respondents to segregated public housing. We have no record in this case that the State of Missouri confined black students to the City of St. Louis as opposed to the county nor that the State had conceded the city and county to be the relevant area in issue. We have no finding that any of the intradistrict violations of the State which occurred within the City of St. Louis had any relationship to the county, or conversely that any acts of the State that may have been of an interdistrict nature affected the City. In *Hills* the particular facts pointed to the nature of the constitutional violation and a remedy in the larger area. *Hills* cannot support the interdistrict remedy approved by the Court today. The district court has made no findings in a vein similar to *Hills* and the Court in its opinion has reached no conclusions similar to those in *Hills* except the unsupported assertion that *Hills* justifies the remedy.

### III.

The Court today bases its approval of the interdistrict transfers on the questionable ground that this issue has been previously decided. The Court's earlier decisions, in which we have discussed the nature of the constitutional violation, do not support its conclusion.

*Liddell III*, *supra*, 667 F.2d 643, dealt with the earlier order of the district court relating to a voluntary coop-

erative plan of pupil exchanges between the city and county (12(a)), a merger and full desegregation of the separate vocational educational programs in the county and city (12(b)), and development and submission of "a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County." 667 F.2d at 650-51. The Court, with respect to paragraph 12(a), specifically states, "[b]ecause the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up." 667 F.2d at 651. Paragraph 12(b), relating to vocational education, was based upon a specific finding of the district court that a separate special district for vocational education was part of the State's failure to take affirmative steps to eradicate the dual system it had formally mandated, and was designed to remedy this violation.

Paragraph 12(c) in *Liddell III* relates to a suggested feasibility study and goes no farther. It recognized that to the extent that segregation was imposed by county school districts, not parties to the lawsuit and not designated as constitutional violators, it could not be considered as government-imposed. To the extent of any segregation imposed by the State or other defendants "and to the extent those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so." 667 F.2d at 651. The Court's opinion, however, cited no finding and made no conclusion that city-county interdistrict segregation was imposed by the State or the City Board. Later in the opinion, the Court specifically referred to the apportionment of costs in *Adams. Liddell III*, 667 F.2d at 654. In discussing apportionment of costs, the Court mentioned specifically the segregation existing "in the St. Louis school system." These statements but reinforce the Court's reliance on the intradistrict violation as the



basis for its action. The Court today gives an overly broad reading of *Liddell III*.

In *Liddell V*, 677 F.2d 626, the Court recognized that *Adams* held that the State had contributed to the segregation "of the public schools of the City of St. Louis." Citing *Hills, supra*, it then concluded that paragraph 12(a) relating to voluntary interdistrict transfers is entirely enforceable against the State defendant and that the State can be required to take actions that will further the desegregation of the city schools, even if the actions required will occur outside the boundaries of the city school district. As we have seen, the Court in *Liddell III & V* did not attempt to identify a type of constitutional violation similar to that in *Hills*, in which actions had confined a certain group of persons to one portion of the area in question, or to demonstrate a finding, concession or conclusion that the city-county area should be considered as one. The Court was considering only "a modest beginning toward voluntary interdistrict desegregation." The Court concluded in *Liddell V* that the State and the city school board must take action to eradicate the remaining vestiges of government-imposed school segregation in the city schools. The Court's references to "actions which may involve the voluntary participation of the suburban schools" and, specifically, to "requir[ing] the state to provide additional incentives for voluntary interdistrict transfer," 677 F.2d at 641-42, were given by way of example only. The tentative suggestion that the State provide "additional incentives" is far from a conclusion that the State be required to fund a voluntary interdistrict transfer plan in which it was not a consenting party. These suggestions were made with reference to the 12(c) hearings which it suggested go forward, and which specifically related to development of a feasibility plan for overall integration. The interdistrict liability proceedings were to await this development. 677 F.2d at 642. The Court today has engaged in a massive bootstrapping effort to

find that *Liddell III* or *Liddell V* has established the liability of the State for the interdistrict transfer plan.

The Court declares that we are bound by our previous holdings as to interdistrict transfers. The law of the case doctrine, however, applies with less force to prior decisions of a panel. *Van Gemmert v. Boeing Co.*, 590 F.2d 433, 436-37 n.9 (2d Cir. 1978); *aff'd*, 444 U.S. 472 (1980); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4478 at 796-97. Resting as it does on the precarious comparison with *Hills*, even if the issue were firmly established by *Liddell V*, the Court en banc should attempt to decide the case correctly rather than consistently. See *Robbins, et al v. Prosser's Moving & Storage Co.*, 700 F.2d 433, 438 (8th Cir. 1983); *United States v. Unger*, 700 F.2d 445, 450 n.10 (8th Cir. 1983); *Wrist-Rocket Manufacturing Co. v. Saunders Archery Co.*, 578 F.2d 727, 730 (8th Cir. 1978).

#### IV.

The State was ordered to match funds raised in a bond issue submitted to the voters by the City Board for capital improvements. The issue failed and this Court's order rather hastily approves the summary treatment of the district court with respect to this issue.

The laws of Missouri place the responsibility for maintenance of the schools' physical plant on the City Board of Education. Mo. Rev. Stat. § 177.031 (1984). This Court in its opinion correctly describes the age, deterioration and deferred maintenance of the plant. In twenty-four years thirteen bond issues have been defeated and one in 1962 approved only after resubmission. The last two bond issues were approved by a simple majority but the constitutional requirement of two-thirds voter approval has blocked passage of these issues.

There is no finding in the district court order and no conclusion by this Court that the condition of the physical plant of the St. Louis schools is related in any way to the constitutional violations of either the City Board or the State. There is nothing to suggest that the condition is other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities. To order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found, which violates the principles laid down in *Milliken I*, *Hills* and *Swann*. This portion of the order violates the admonition of the Second Circuit in *Arthur v. Nyquist*, 712 F.2d 809, 813 (2d Cir. 1983), that "a court must be alert not to permit . . . use [of] a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation."

There are simply no district court findings and no conclusions by this Court to justify the State's participation in funding capital improvements. This is the sole responsibility of the City Board. Certainly in the absence of any findings by the district court that the segregative policies of the State had an impact on the city schools' physical plant, that funding of additional capital improvements is necessary to redress such wrong, and that less ambitious efforts would not have been adequate, there is simply no basis to mandate this aspect of state funding.

## V.

The Court today remands a portion of the funding order to the district court for further findings insofar as the district court issued specific mandates to the City Board with respect to its levy and the tax rollback. The Court, however, authorizes future specific action if the district court makes a finding that no other alternatives

are available or sufficient to finance its desegregation order.

The Court need not and should not go this far. The taxing power of the states is primarily vested in their legislatures, deriving their authority from the people. *Green v. Frazier*, 253 U.S. 233, 239, 40 S. Ct. 499, 64 L.Ed. 878 (1920). In *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L.Ed.2d 256 (1964), the Supreme Court ordered local authorities to operate a public school system like that operated in other counties in Virginia and to restore a tax illegally abolished, but specifically left the manner of levy and the amount and the means of collection to procedures under state law and standards. See also *Plaquemines Parish School Board v. United States*, 415 F.2d 817 (5th Cir. 1969). Our earlier decision in *United States v. Missouri*, 515 F.2d 1365 (8th Cir. 1975), cert. denied sub. nom. *Ferguson Reorganized School District v. United States*, 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975), simply permitted the tax levy to be established at the highest rate approved by voters in the largest district.

I have no quarrel with the proposition that, with proper findings that particular programs are necessary to remedy a constitutional violation that has been found to exist, a district court has the power to order the funding of those programs. The order should simply be in the form, however, to mandate that certain programs be carried out, and legislative bodies should be left with the responsibility for structuring the local or state taxing instrumentalities to achieve the result required. The federal courts go too far in mandating specific taxing procedures. I thus agree with the Court today only insofar as it mentions the option of the district court to simply enter a judgment against the State, as tortfeasor, for the amount required to fund those programs necessary to remedy the constitutional violation.

## VI.

The disagreement expressed with respect to the Court's opinion today is specifically limited to those areas set forth above. The programs required by the settlement plan within the city school district, and particularly within the all-black schools, to provide a quality education for those students deprived of proper educational opportunities by the segregative actions of defendants, and the enhancement and enrichment programs are fully justified by this Court's earlier findings of intradistrict violation. The magnet schools and integrative programs within the City of St. Louis are similarly geared to the particular violations that were found to have occurred. Thus, the opinion of the Court in III, IV (A) and (B) approved programs that are justified by the record before the district court, and this Court, and I join the Court in these portions of its opinion. The ruling on other issues in VII (A), (B) and (C) are properly reached.

The settlement plan is an inspired and far reaching one. I express my disagreement today only insofar as the State is required to fund a portion of this program that has been the subject of agreement by other parties and not the State, where there are no findings that those portions of the program are necessary to remedy the intradistrict constitutional violation that has been found. Even if the Court were to hold today in accordance with my views I believe that a settlement would nevertheless be achieved. The county school districts profit immeasurably by the settlement agreement, as nearly all of the funding obligation is placed upon the State and they are relieved of the risk of being found to have in any way contributed to any interdistrict segregation. The State has further incentive to reach settlement as to these issues, and properly should be allowed to have a voice in the extent of the programs to be funded, because such a great portion of the expenses must be borne by the State.

BOWMAN, Circuit Judge, dissenting.

I join in Judge John R. Gibson's well-reasoned dissent concerning the lack of findings to support the interdistrict aspects of the remedy, the lack of findings to support the requirement that the State provide funding for capital improvements in the physical plant of the City schools, and the singular inappropriateness in our Constitutional system of a federal court's ordering state and local taxing authorities to impose specific tax increases. His opinion adequately reflects my disagreement with the decision of the Court in all three of those areas. I cannot agree, however, that the remaining intradistrict aspects of the remedy approved by the Court are justified by adequate findings, and for that reason I dissent separately.

The issue in this case is not whether quality education is a good thing, or whether it would be wise public policy for the State to dedicate more of its resources to the public schools. Instead, the issue is whether, on the present record, we have the Constitutional authority to compel the State to provide funding for the array of costly programs required by the settlement plan. I submit that we do not.

The costs of carrying out the plan that the Court today approves will be enormous. For the 1984-85 year alone, the State's share of these costs is likely to exceed \$49,000,000, with the City school board contributing additional funds of approximately \$15,000,000. These costs, and particularly the State's share, will increase very substantially in future years as the pace of implementation quickens. If these costs are necessary to remedy a Constitutional violation, then they must be borne by the responsible parties—and ultimately by the citizens of the State—no matter how financially painful compliance may be. But if these costs go beyond what is needed to right a Constitutional wrong, if in fact the plan includes pro-



grams and amenities that may be laudable from an educational standpoint but are not tailored to the incremental segregative effects that have been caused by the Constitutional violation, then the effect of the Court's decision is to transfer, without any basis in law or the Constitution, funds from taxpayers or other competing programs (including other needy school districts) to the beneficiaries of this plan. Our problem as a reviewing court is that the record gives us no basis for an intelligent and principled determination of the critical question in this case: on which side of the line—Constitutional necessity or judicial excursion into policy-making and educational experimentation—do the various components of the plan approved by the district court fall? <sup>1</sup>

We do not have before us a desegregation plan fashioned by the district court after careful findings of fact

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<sup>1</sup> A few examples will serve to illustrate the problem. The plan approved by the Court includes millions of dollars for such things as pre-school centers, all-day kindergartens, schools of emphasis (which are in addition to the magnet schools), parental involvement, and Saturday classes. The magnet school component, as presently structured, will require over \$22,000,000 during the plan's first two years. During 1984-85 alone, the plan would provide \$1,762,000 for an item designated "Coordination of Instruction"—whatever that may entail. It was not even mentioned, much less discussed or made the subject of fact-finding, during the hearing conducted by the district court, and the same is true of virtually all the plan's specific items. Substantial funding is provided for "Curriculum Development," "Peer Tutoring," "Shared Motivation," "Role model experiences," and "Strengthen the capabilities of the public affairs unit." The capital improvements section of the plan purports to "ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process." While the professional educators who drafted the plan may be forgiven for writing that way, we should not be forgiven if we allow this plan to go into effect without first insisting that it be examined in the manner the Constitution requires. Because of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation.

of the kind required by the Supreme Court in *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 417, 420 (1977). Rather, what we have before us is a desegregation plan fashioned by agreement of the City school board, the suburban school boards, and the plaintiffs. The State, which must bear the brunt of the costs, is not a party to the agreement. Over the objections of the State, the district court has adopted the agreement or plan, and it has done so without inquiring into the continuing effects of the Constitutional violation and the need for the various programs included in this plan to remedy those continuing effects.

In considering the proposed plan, the district court merely conducted a hearing to determine whether the proposed settlement plan "is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of this school desegregation case." *Liddell v. Bd. of Educ.*, 567 F. Supp. 1037, 1039 (E.D. Mo. 1983) (emphasis added). Thus the district court's inquiry was nothing more than the inquiry required under Rule 23(e), Fed. R. Civ. P., to determine whether a settlement of a class action should be approved. Moreover, the inquiry was focused on the *interdistrict* phase of the case, not the *intradistrict* phase. Finding the plan satisfactory in terms of the Rule 23 considerations set forth in *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir.), *cert. denied*, 423 U.S. 864 (1975), and in Professor Moore's discussion of Rule 23, 3B Moore's Federal Practice ¶ 23.80[4] at 23-521 through 23-524, and giving a few obligatory bows to the Constitution in language wholly conclusory, the district court approved the plan and ordered all signatories, as well as the State defendants, to comply with all its provisions. 567 F. Supp. at 1042, 1055.

The district court's approach and its findings are totally inadequate to provide a Constitutional basis for its sweeping order and the only slightly less sweeping

order that this Court today approves. The Constitutional violation that has been found against the City school board and the State<sup>2</sup> would justify requiring them to create a unitary school system within the City school district, but it does not justify the judicially-compelled creation of a system that never would have existed even if *de jure* segregation never had been practiced in the City schools. As the Supreme Court has made clear, the remedy in a school desegregation case should restore the students in the affected school district “‘to the position they would have occupied in the absence of such conduct.’” *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (citation omitted) (*Milliken II*). Similarly, in *Dayton*, *supra*, the Supreme Court has made our duty—and the limits of our authority—plain. In that case the Court was dealing, as we are dealing here, with a situation where *de jure* segregation of the races in the schools ceased many years ago. If, said the Court, Constitutional violations are found, then

[T]he District Court in the first instance, subject to review by the Court of Appeals, must determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy.

We realize that this is a difficult task, and that it is much easier for a reviewing court to fault

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<sup>2</sup> As Part I. of Judge John R. Gibson's separate opinion demonstrates, the exact nature of the Constitutional violation previously found in this case is not easily determined. I agree, however, with his conclusion that the violation found on the part of the City school board and the State is failure to take adequate steps to desegregate the schools throughout the City.

ambiguous phrases such as 'cumulative violation' than it is for the finder of fact to make the complex factual determinations in the first instance. Nonetheless, that is what the Constitution and our cases call for, and that is what must be done in this case.

*Dayton*, 433 U.S. at 420 (citation omitted).

In the case now before us, there has been no attempt to determine the incremental segregative effects of the Constitutional violation committed by the defendants or to compare the present City school population to what it would have been absent a violation. There has been no tailoring of the order to redress only "that difference" referred to in *Dayton* or to restore students in the City schools "to the position they would have occupied in the absence of such conduct" as required by *Milliken II*.

The district court's failure to conduct a *Dayton*-type inquiry and to make findings on incremental segregative effects has rendered it impossible for this Court properly to review the district court's order. This failure has left us without any measuring stick by which we can assess the various components of the settlement plan. The opinion of the Court implicitly recognizes this difficulty when, in searching for some standard to guide its review of certain of the compensatory and remedial programs approved by the district court, the Court resorts to a school classification device—Class AAA status—developed by the State's Department of Education as a means of rating schools, and approves programs necessary to permit the City schools to regain and retain their Class AAA status. Although the Court's need to find a standard to which it can repair is understandable, I do not believe that the approach taken is sound. There has been no showing of any kind that in the absence of the defendants' Constitutional violation the City schools would have maintained Class AAA status. Thousands of Missouri school children, over one-quarter of the total number, attend schools that lack Class AAA status. That fact alone, when coupled with the recent restoration of

the City schools to Class AAA status, casts considerable doubt on the proposition that any educational problems that may exist within the City schools are of unusual severity or that they rise to a level of Constitutional concern. In any event, we cannot simply make assumptions about the continuing harms that have flowed from the violation; rather, these harms must be determined by the kind of fact-finding by the district court and review by this Court that *Dayton* mandates.

The process by which the settlement plan came into being underscores the need for careful fact-finding before imposing the plan and its burdensome costs upon the State. In the first place, it would be a most remarkable coincidence if a plan intended to settle the broad interdistrict claims in this case was at the same time properly tailored to cure only the effects of the intradistrict violation. Moreover, it must be remembered that the negotiations leading to the plan largely excluded the State, at least during the critical latter stages when it had become apparent to the State that it could not agree to a plan of the scope and cost that the other parties were determined to achieve. The plan was expressly conditioned upon compulsory funding from the State, and all the participating school districts stood to reap substantial benefits. None of them had any real incentive to prevent the others from piling their plates high with programs and funds that would benefit their school systems. As might be expected, there is no indication that the parties to the negotiations made any attempt to measure the incremental segregative effects of the violation on which the plan rests or to remedy only those effects. Such negotiations are inherently unlikely to produce a remedy narrowly tailored to the Constitutional wrong and any present-day educational deficiencies resulting therefrom that fairly may be charged to the State and, through it, to citizens in all walks of life throughout the State. Thus the need for judicial alert-



ness, and careful fact-finding, is especially critical in this case.<sup>3</sup>

For the reasons stated above, I would reverse the judgment of the district court and remand the case to the district court for further proceedings consistent with

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<sup>3</sup> The looseness, vagueness, and uncertainties of the plan were emphasized by one of the witnesses at the hearing before the district court:

In nearly every program budget [of the plan], one can point to some strange budget items, some budget items which are not consistent with the description, certainly not with the planning as is in the case of many programs and I would not approve it under any circumstances until all those points were clarified, until it was clear what was expected to happen as a result of the expenditure of money, and only then if one could conclude it would not interfere so extensively with the programs in the City that they would be rendered in poorer shape than they are.

Testimony of Otis Baker, Coordinator of State and Federal Programs, Division of Instruction, State Department of Elementary and Secondary Education. Tr. of Fairness Hearing, p. 169. Another witness, an out-of-state "expert" presented by the proponents of the plan, acknowledged during cross-examination that to her knowledge there is not another urban school system in the United States that has all the components that are included within the quality education improvements contained in the settlement plan. Testimony of Carol Gibson, Director of Education, National Urban League. Tr. of Fairness Hearing, p. 1-195. One of the opponents' witnesses made the following observation concerning the quality education improvements portion of the plan:

This whole section of the proposal looks to be an attempt by the Saint Louis school board to justify every expense they now have and every kind of expenses they can dream up for the future, as a part of the desegregation case. We well remember their earlier attempt to have general maintenance and painting needs become a part of the start-up expenses for implementing the 12(a) plan now in effect.

Testimony of Shannon K. Burnside, President, West County Association for Neighborhood Schools. Tr. of Fairness Hearing, p. 3-49, 50.



this opinion. I would hope, of course, that the parties could resume their negotiations and achieve a settlement agreement to which all could assent.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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No. 72-100C (3)

CRATON LIDDELL, *et al.*,  
*Plaintiffs,*

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS,  
STATE OF MISSOURI, *et al.*,  
*Defendants.*

ORDER

[Filed Jul. 5, 1983]

A memorandum dated this day is hereby incorporated into and made a part of this order.

Having carefully considered the proposed Settlement Plan, the evidence duly received in support of and opposition to that Plan, public comments thereon, having considered the pertinent record in this cause, and being duly advised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. In accordance with the provisions of the memorandum, the Settlement Plan, including the Appendix and Exhibit 2, is hereby approved as fair, adequate, reasonable, and constitutionally permissible.

2. The Settlement Plan and its Appendix as revised by Exhibit 2, as approved, shall be implemented as of this date for the 1983-1984 school year, and all signatories, as well as State defendants, are required to comply with all the provisions thereof.

3. If the school districts of Mehlville and Rockwood wish to litigate rather than participate in the approved Settlement Plan, they, or either one of them, shall so notify the Court of this decision in writing by July 11, 1983, and, upon such written notification, their 12(c) liability phase trial is hereby scheduled to begin on July 25, 1983, at 10:00 a.m.

4. The State of Missouri and City Board shall share the costs of implementing the approved Settlement Plan, as more fully set forth within the Plan and this order.

5. Since allocation of costs is not specified within the Plan, those costs shared by City Board and the State of Missouri pursuant to the financing provisions of the Settlement Plan, Section X(B)(3), as approved, shall be allocated as follows:

(a) regardless of the program's or school's location, the State of Missouri shall pay in full the actual, reasonable costs of implementing the magnet programs and schools in Section III of the Settlement Plan, as approved, and in Section C of its Appendix and of Exhibit 2, *Liddell v. Board of Education*, 677 F.2d 623, 641-42 (8th Cir.), *cert. denied*, 103 S.Ct. 172 (1982);

(b) regardless of the program's location, the State of Missouri shall pay in full the actual and reasonable costs of implementing the part-time educational programs as identified in Section V of the Settlement Plan, as approved, and in Section B of its Appendix and of Exhibit 2, *id.*;

(c) except as noted concerning capital expenditures in paragraph 5(d) below, for other programs implemented pursuant to the Settlement Plan, as approved, City Board shall pay fifty percent of the reasonable actual costs of the programs implemented within the geographic boundaries of the City of St. Louis only, and shall not pay any costs incurred for programs implemented beyond the geographic boundaries of the City of St. Louis. The State

of Missouri shall pay fifty percent of the reasonable actual costs of such programs implemented within the geographic boundaries of the City of St. Louis, and shall pay one hundred percent of the reasonable actual costs of programs implemented outside the geographic boundaries of the City of St. Louis;

(d) City Board shall retain the obligation and responsibility to fund capital expenditures needed to restore, repair, maintain, or enhance existing facilities as part of City Board's desegregation efforts. Any amount raised for capital expenditures by City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri;

(e) the State of Missouri shall pay in full the costs of transportation of the interdistrict transfer students; the reasonable, actual costs to implement incidental programs, such as the student recruitment efforts, any community involvement centers, the Voluntary Interdistrict Coordinating Council (VICC) and its staff, the Recruitment and Counseling Center and its staff and offices, and parent involvement programs; and reasonable attorney's fees that may be awarded to the prevailing plaintiffs City Board, Caldwell, and Liddell.

6. For the payment of City Board's share of the costs:

(a) the City Board shall certify to the Court, on or before July 15, 1983, the amount needed to meet its share of the reasonable actual costs of implementing programs pursuant to the Settlement Plan, as approved, as well as the tax rate necessary to fund these costs;

(b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools;

(c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court

will consider an appropriate order to obtain the funds deemed sufficient to meet the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools;

(d) the City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis as of July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Proposition C. The amount of revenue retained by the City Board by reason of not reducing its operating levy shall be utilized to fund the implementation of programs needed to meet City Board's constitutional obligation to desegregate the City's public schools pursuant to the Settlement Plan, as approved. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984;

(e) in the event the above funding orders fail to provide the necessary funds, the Court will consider an appropriate order, following notice and an opportunity to be heard on the amount, to increase the City Board's property tax rate by an amount reasonably necessary to fund the City Board's share of the costs of implementing the Settlement Plan programs pursuant to City Board's constitutional obligation to desegregate the City's public schools; and

(f) in its discretion, City Board may use other sources available to it to fund its share of the programs implemented pursuant to the Settlement Plan, as approved. To conform this order with the prior decree of the Eighth Circuit, *Liddell, supra*, 677 F.2d at 631, any outside funds received by City Board for the purpose of implementing these programs may first be applied to reduce the City Board's share of the costs of the programs and then applied to reduce the State's share of the costs of the programs.

7. State defendants shall have discretion in the determination of the source or sources of the State funds with which to pay its share of the actual reasonable costs of implementing programs pursuant to the Settlement Plan, as approved, except to the extent that discretion is otherwise limited by the provisions of Section X of the Plan, as approved.

8. The State of Missouri shall separately pay transportation costs and the transfer student payments made to sending and receiving districts, as set forth in the Settlement Plan; and shall make its other payments in accordance with the provisions of order H(1810)82, dated December 17, 1982.

9. Each participating school district shall make a continuing effort to reduce the actual costs of implementing the Settlement Plan, as approved, without impairing the quality of the Settlement Plan's components.

10. Each participating school district shall have a continuing obligation to take all appropriate steps to secure and maintain any additional sources of desegregation assistance that may be available. If any participating school district obtains desegregation assistance from an outside source to fund a component of the Settlement Plan, as approved, the amount of such funding shall be deducted from the State's funding requirements under this order, except with regard to City Board's receipt of outside funds as detailed in paragraph 6(f) above.

11. For the effective and timely implementation of the Settlement Plan, as approved, the following budgeting procedure shall apply with regard to all actual and reasonable costs, except transportation costs and costs incurred for the student transfer payments made to sending and receiving districts, incurred pursuant to the approved Plan:

(a) each participating school district shall deliver to State defendants a proposed budget for all desegrega-



tion programs and activities intended for implementation pursuant to the Settlement Plan, as approved. These budgets shall be delivered to the State on or before July 15, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years, the budgets shall be delivered to the State on or before March 1 of the preceding fiscal year;

(b) the budget for the VICC and for the Recruitment and Counseling Center (RCC) shall be filed with the Court and submitted to the State on or before July 25, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years these budgets will be filed on or before March 1 of the preceding fiscal year;

(c) on or before July 25, 1983, representatives of the State and of each participating district shall identify in writing their areas of agreement and disagreement relating to budgetary matters. Since City Board has filed and the State has received the City Board's 1983-1984 budget (Exhibit 3, as corrected), representatives of the State and City Board shall meet and file their joint report on or before July 20, 1983. For subsequent fiscal years these statements of areas of agreement and disagreement relating to budgetary matters shall be submitted on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration.

For fiscal year 1983-1984, the State shall submit in writing any objections to the budgets for the VICC and for the RCC within ten days of receiving those budgets. For subsequent fiscal years, representatives of the State and of the VICC and RCC shall identify in writing their areas of agreement and disagreement relating to budgetary matters on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of

budgetary matters then remaining in dispute for the Court's consideration;

(d) the Court's financial adviser may participate in the budget meetings between the State and the various representatives, and may present comments on the budgets to the Court either in writing directly, or at any subsequent hearing that may be required; and

(e) for the 1983-1984 fiscal year, any budget disagreements that remain, after the required meetings and reports, will be referred to United States Magistrate David D. Noce for a hearing on or before August 5, 1983. For subsequent fiscal years, the Court will consider any remaining disputed budget issues in a manner the Court deems appropriate.

12. The Court hereby stays further proceedings in this cause pursuant to Section XII of the Settlement Plan, as approved, except to the extent further proceedings may be required pursuant to paragraph 3 above.

13. Upon the establishment of the VICC, as described in Section IX of the approved Settlement Plan, the present Coordinating Committee for voluntary interdistrict school desegregation in the St. Louis metropolitan area shall terminate, and the 12(a) voluntary plan shall be dissolved. The VICC shall acquire all property and assume the obligations and administrative responsibility for all existing programs under the 12(a) voluntary plan in accordance with the provisions of Section IX of the approved Settlement Plan.

14. Since they are prevailing parties as to this phase of the case, plaintiffs City Board, Caldwell, and Liddell are granted leave until August 30, 1983, to file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration. Any pending issues regarding attorney's fees arising from discovery or otherwise in this phase of the case shall be dealt with at that time.

15. All pending Fairness Hearing motions and objections not heretofore ruled or otherwise dealt with herein are herewith denied.

Neither these parties nor this judge can delegate the powers of the federal court to enforce constitutional rights. The Court retains jurisdiction of this matter.

Dated this 5th day of July, 1983.

/s/ William L. Hungate  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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No. 72-100C (3)

CRATON LIDDELL, *et al.*,  
*Plaintiffs,*

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS,  
STATE OF MISSOURI, *et al.*,  
*Defendants.*

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MEMORANDUM

[Filed Jul 5, 1983]

I.

This matter is before the Court, following a fairness hearing, to determine whether a proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of this school desegregation case. The Settlement Plan is offered by the Liddell plaintiff class, the Caldwell plaintiff class, and all the school districts in St. Louis City and St. Louis County, Missouri.<sup>1</sup>

In 1980, defendant Board of Education of the City of St. Louis (City Board) and State of Missouri defendants were found liable for the establishment and maintenance of a racially segregated public school system within the City of St. Louis, in violation of plaintiff class members'

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<sup>1</sup> Except the Special School District of St. Louis County, which has special jurisdiction over vocational and handicapped education in that County's school districts, and is to be dealt with hereafter.

constitutional rights. *Adams v. United States*, 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied*, 449 U.S. 826 (1980); *Liddell v. Board of Education*, 491 F.Supp. 351 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081, 1091 (1981). To remedy this constitutional violation, in 1980 the district court (Meredith, J.) ordered the implementation of a mandatory intra-district desegregation plan within the City of St. Louis public school system, and the development and submission of plans involving voluntary interdistrict transfers between suburban school districts and the St. Louis City school district. *Liddell*, *supra*, 491 F.Supp. at 353-54, as amended by Orders dated September 17, 1980, and December 19, 1980. To date, the Court has approved and certain parties have implemented two interdistrict transfer plans (the 12(a) voluntary plan and the 12(b) vocational education plan). In the present 12(c) phase of this case, the Court is considering the implementation of a third interdistrict transfer plan.

A more complete history of this lengthy litigation is found in the appendix of this opinion. Its consideration is essential to a thorough understanding of the background of this decision. Its import is incapable of compression into a newspaper headline, a radio bulletin, or a thirty-second TV spot. At the same time, its complete inclusion in the body of this opinion would submerge the answers to the deceptively simple questions which are presently determinative of this phase of the litigation.

Should the Agreement in Principle, submitted by the plaintiffs and twenty-two of the twenty-three suburban school districts, be approved?

Should the Settlement Plan,<sup>2</sup> submitted by the plaintiffs and twenty-one of the twenty-three suburban school dis-

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<sup>2</sup> The Settlement Plan is repeatedly referred to by the media and some public officials as the "Hungate Plan." Although the compliment implied, inflates me with legitimate pride, it nevertheless must be denied! This judge did not write one line of the

tricts, be approved as fair, reasonable, and adequate, and as not inconsistent with the Agreement in Principle?

The answer to both of these questions is, "Yes."

All but one of the twenty-three St. Louis County school districts joined in the Agreement in Principle when first submitted. That one district, Riverview Gardens, later approved the Settlement Plan, thereby ratifying the Agreement in Principle. This made approval of the Agreement in Principle unanimous by all twenty-three St. Louis County school districts. The Agreement in Principle and the Settlement Plan are accepted by all proponent plaintiffs.

Among the plaintiffs, only plaintiff-intervenors City of St. Louis and United States decline to join in this effort to settle the case. Recent months find them reluctant either to litigate or to settle.

Six years ago, the City of St. Louis and the United States each sought and obtained leave to intervene as plaintiffs in this case, then already five years old. *See* City's renewed motion to intervene, dated July 7, 1977, granted by order dated July 13, 1977; United States' motion to intervene, filed and granted August 10, 1977. After attaining plaintiff-intervenor status, for four years both parties actively participated in the numerous proceedings of this case at both the trial and appellate court levels. Yet, in the present 12(c) phase, the City of St. Louis joined in the State defendants' motion to dismiss the City as a party in these proceedings. Moreover, the United States, although opposing State defendants' ef-

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Agreement in Principle or the Settlement Plan. This comprehensive educational program, designed to resolve a difficult constitutional and social problem by voluntary, rather than mandatory, means, is the product of leading members of the St. Louis educational and legal communities. Equally important was the ability of numerous school board members, school officials, teachers, and administrators to take an area-wide view of the steps and sacrifices necessary to redress this problem.



forts to dismiss it as a party in this phase, has persistently refused to disclose clearly its position regarding the pending claim until the conclusion of the evidence. *See, e.g.,* United States' responses to discovery requests, H(1466)82 at 1-2, dated October 12, 1982; H(1488)82 at 2, dated October 18, 1982; H(1515)82 at 3, dated October 20, 1982; H(1528)82 at 4, dated October 25, 1982; deposition of the United States, transcript dated November 30, 1982 at 14, 58-59; order requiring disclosure "with particularity" of United States' position, H(1871)82, dated December 29, 1982; statement of United States in response to order, H(1926)83, dated January 10, 1983. Now, while endorsing the concept and some portions of the proposed settlement, these two plaintiff-intervenors do not approve certain provisions of the proposal.

Since all twenty-three of the St. Louis County school districts approve the Agreement in Principle, along with the proponent plaintiffs, their further agreement to the Settlement Plan would not be necessary, except insofar as its proposals may be inconsistent with the Agreement in Principle. After duly considering the pleadings, exhibits properly admitted in evidence, public comments filed, and the testimony adduced in a five-day fairness hearing, this Court finds the Settlement Plan is not inconsistent with the Agreement in Principle.

After having unconditionally accepted the Agreement in Principle, two of the twenty-three St. Louis County School Districts, Rockwood and Mehlville, proposed additional conditions upon their entry into the Settlement Plan. They made it clear they did not oppose the Settlement Plan, and Rockwood has consistently reiterated that it is a proponent of the Settlement Plan. Since the Court finds the Settlement Plan is not inconsistent with the Agreement in Principle, to which all St. Louis County school districts have agreed, and since further expressions of agreement were not required, these two districts' conditions are approved insofar as they are not inconsis-

ent with the Agreement in Principle and the other provisions of the Settlement Plan, to which twenty-one of the twenty-three St. Louis County school districts have agreed. Thus, Rockwood and Mehlville are also members in good standing of the Settlement Plan.

If Mehlville or Rockwood, or both, wish to litigate this issue further, they shall so notify this Court in writing by July 11, 1983, and the trial of the 12(c) liability of either or both of said school districts wishing to contest the matter shall begin July 25, 1983.

Expensive adversary trials ultimately deny justice to countless deserving people. This litigation has already consumed eleven years, and absent a settlement promises to consume many more. Society's greatest opportunities lie in encouraging human inclinations toward compromise, rather than stirring our tendencies for competition and rivalry. If lawyers, educators, and public officials do not help marshal cooperation and design mechanisms that promote peaceful resolution of conflicts, we shall miss an opportunity to participate in the most creative social experiments of our time. "A Flawed System," by Derek C. Bok, *Harvard Magazine*, May-June, 1983, at 38-71.

The Court commends the school officials and attorneys in this case, including the amicus curiae, Shulamith Simon, and the Special Master, D. Bruce La Pierre, along with the educational and religious leaders of this community, all of whom must receive full credit for bringing us to what has been called the threshold "of an historic settlement like none other achieved in this country, and far beyond the wildest dreams of the participants: a settlement agreement which would set the standards by which all other desegregation plans would be measured; a settlement agreement which would bring to an end on an amicable voluntary basis, 11 years of emotional, complicated and sometimes divisive litigation." Opening

Statement of the State of Missouri defendants, Transcript of Fairness Hearing, May 13, 1983, at 6.

Finding parties, as diverse as those present here, reaching such a degree of unanimity as has been achieved by the proponent plaintiffs and the twenty-three St. Louis County school districts, would give any court pause before disapproving the efforts of these parties to find a voluntary solution to a complex constitutional problem in which legal, educational, political, and financial problems are inextricably entwined.

## II.

Having found the Settlement Plan is not inconsistent with the Agreement in Principle, the next question presented is whether the Settlement Plan is fair, reasonable, and adequate and constitutionally sufficient.

(A) Pursuant to Fed. R. Civ. P. 23(e), the Court may only approve a class action settlement that is fair, reasonable, and adequate. *Grunin v. International House of Pancakes*, 513 F.2d 114, 123 (8th Cir.), *cert. denied*, 423 U.S. 864 (1975). The Court must also insure that the terms of the agreement meet constitutional standards. *See Liddell v. Caldwell*, 546 F.2d 768, 773-74 (8th Cir. 1976), *cert. denied*, 433 U.S. 914 (1977). In reaching its decision on the proposed agreement, the court may not decide unsettled issues in the case. *Grunin, supra* at 123-24. Furthermore, the Court must balance the public interest in favor of settlement against the interests of class members and the public as a whole. *Armstrong v. Board of School Directors*, 616 F.2d 305, 312-14 (7th Cir. 1980).

In *Grunin* the United States Court of Appeals for the Eighth Circuit specified that a district court determines the adequacy of the settlement by considering:

- (1) the strength of the merits of plaintiffs' case balanced against the resolution offered in settlement;

(2) the complexity, length, and expense of further litigation;

(3) the amount of opposition to the proposed settlement; and

(4) defendants' overall financial ability to pay.

*Grunin, supra* at 124; Manual for Complex Litigation, § 1.45 at 56 (5th ed. 1982).

Other factors the Court may consider include:

(5) the presence of collusion in reaching the settlement;

(6) the opinion of competent counsel as to the settlement's fairness and adequacy;

(7) the class members' reaction to the settlement; and

(8) the stage of the proceedings and the amount of discovery completed in the case.

3B Moore's Federal Practice ¶ 23.80[4] at 23-521 through 23-524.

(1) *The Strength of Plaintiffs' Case Balanced Against the Resolution Offered in Settlement.* By their interdistrict claims, City Board and Caldwell assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact," a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). City Board and Caldwell further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. In support of their allegations, these plaintiffs would seek to show student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, and failures or refusals to consoli-

date school district boundaries, among other acts or omissions by defendants. As a remedy for the alleged constitutional violations, City Board and Caldwell seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful;"

(b) injunctive relief for the development and implementation of a remedial plan; and

(c) an award of attorney's fees and expenses.

With regard to the injunctive relief, these plaintiffs would seek consolidation of all St. Louis County, Jefferson County, and St. Charles County districts and the City of St. Louis district into five districts and would seek extensive student reassignment and transportation as necessary to achieve complete school desegregation. *See, e.g.*, Report of the Board of Education of the City of St. Louis Pursuant to Paragraph 12(c) of the Court's order dated May 21, 1980, as amended, dated November 16, 1981; Final Report on 12(c) Plan filed by City Board on February 10, 1982. They would also seek desegregation of teacher faculties, creation of uniform curricular and other educational standards, and the initiation of special educational programs, including magnet schools.

The St. Louis County school districts, as well as other defendants, denied the alleged constitutional violations and would have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each county school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

Without explicitly addressing the school districts' alleged liability, the proposed Settlement Plan provides for:

(i) voluntary interdistrict transfers of students, with specified ratios and goals for the racial balance of student populations in participating districts;

(ii) a hiring and transfer program, with specified goals for the racial balance of administration and teaching staff of participating districts;

(iii) the establishment of specialized educational programs, including: programs focused on the all-black schools remaining within the City of St. Louis; magnets; part-time programs; and cooperative programs with paired schools and with local cultural, civic, and business institutions;

(iv) provisions to insure equitable treatment of all students;

(v) one administrative body to coordinate and review implementation of the programs;

(vi) various enforcement and grievance procedures; and

(vii) an award of reasonable attorney's fees to City Board, Liddell, and Caldwell plaintiffs.

Thus, although the Settlement Plan does not presently resolve the City Board's and Caldwell's request for declaratory relief or their allegations of defendants' liability, the Settlement Plan provides proponent plaintiff class members with immediate, extensive opportunities to receive a quality education in a broad range of desegregated settings throughout the St. Louis metropolitan area.

(2) *The Complexity, Length, and Expense of Future Litigation.* At present there are three remedial plans already approved and implemented in the metropolitan area:

(a) the intradistrict plan within the City of St. Louis only;



(b) the 12(a) voluntary plan providing for interdistrict transfers among the City and fifteen St. Louis County school districts; and

(c) the 12(b) vocational education plan providing for interdistrict transfers between the vocational programs of the City and those of the Special School District of St. Louis County.

This phase of the eleven-year-old lawsuit involves:

(i) two certified plaintiff classes;

(ii) seven "active" St. Louis County school district defendants against which discovery is complete, pretrial materials are filed, and trial may proceed;

(iii) ten St. Louis County school district defendants that are subject to stay orders due to their participation in the 12(a) voluntary plan;

(iv) five St. Louis County school districts that have not yet been served as defendants due to a stay order entered upon their participation in the 12(a) voluntary plan from its inception;

(v) one St. Louis County school district that has not yet been served as a defendant due to a stay order entered in consideration of the district's unique status as a product of a prior court-ordered desegregation plan of consolidation of three school districts; and

(vi) several other parties who are prepared for trial, i.e., State of Missouri defendants; St. Louis County government defendants; plaintiff-intervenor City of St. Louis, etc.

Plaintiffs could immediately go to trial against only seven St. Louis County school districts, and would at least have to seek to lift or vacate stays and pursue discovery efforts before going to trial against the other six-

teen St. Louis County school districts. Absent the Settlement Plan, there is doubt that such a broad remedy could be imposed by the Court until all school districts had an opportunity to be heard in a 12(c) liability hearing. Thus, if the Settlement Plan is not approved plaintiffs must proceed against distinct sets of St. Louis County school districts in order to litigate fully the pending 12(c) interdistrict claims.

In contrast to this potentially prolonged judicial process, the Settlement Plan promises immediate and broad implementation of its programs since it is proposed by the proponent plaintiffs, City Board, Liddell, and Caldwell classes, and all twenty-three St. Louis County school districts, regardless of their status as "active" or non-active parties or as nonparties.

The history of this case, moreover, shows the parties' propensity to appeal decisions of this Court. Since the parties are not unanimous in their participation in this Settlement Plan the Court doubts that approval of the Settlement Plan will foreclose appeals at this stage of the case. The Court, however, determines that, with approval of the Settlement Plan, there will be a reduction in the number and scope of any appeals, as well as immediate implementation of the proposed programs pending resolution of the appeal process.

(3) *The Amount of Opposition to the Proposed Settlement.* To express any opposition to the proposed Settlement Plan, interested persons could either file written comments or appear in person at the fairness hearing. In addition to proponents' presentation at the fairness hearing, the Court heard testimony and oral statements from eleven non-party individuals who expressed opposition to the plan, with nine of those appearing on behalf of organizations.

State defendants and plaintiff-intervenor City of St. Louis also presented evidence in opposition to the proposed Settlement Plan.

Additionally, the Court received forty-two written statements from interested individuals and organizations, including statements from some of those who presented statements at the fairness hearing. Some of the statements filed were joined in by several individuals.

In considering the extent of opposition, the Court must view the agreement in its entirety, rather than isolating individual components of the agreement for analysis. *Armstrong, supra*, 616 F.2d at 315. The settlement, moreover, is a product of compromise efforts by adversaries. Usually neither side will attain all of its goals in such a settlement. The Court must respect the terms derived from the parties' negotiations as long as the agreement does not violate constitutional standards and is found adequate, reasonable, and fair. *See Armstrong v. Board of School Directors*, 471 F.Supp. 805, 812-13 (E.D. Wis. 1979), *aff'd*, 616 F.2d 305 (7th Cir. 1980).

The amount and type of opposition expressed against this Settlement Plan is not overwhelming in light of the scope and notoriety of this lawsuit. Many statements are thought-provoking and informative. Others seem to misinterpret:

(a) the voluntariness of the Settlement Plan, which contains no court-imposed student or staff re-assignments, transportation requirements, district consolidations, or school closings, to name just a few of the court-mandated remedies available if the requisite interdistrict liability is found;

(b) the scope of and issues addressed by this phase of the lawsuit, which phase focuses on interdistrict school desegregation as it affects court-determined segregation within the City's public schools, and which does not focus on employment discrimination, housing problems, or on alleged intra-district violations within other districts; or

(c) the constitutional desegregation principles, which as yet do not focus solely on improving the quality of education in existing one-race schools.

The Court has considered all statements presented by members of the public and understands that those not associated on an ongoing basis with this prolonged and complex case might misapprehend certain points.

(4) *Defendants' Overall Financial Condition and Ability to Pay*. While a customary factor to consider in determining the adequacy of a proposed settlement, defendants' ability to pay is not a relevant factor in determining whether or not to approve a class action settlement in a school desegregation case. *Armstrong v. Board of School Directors*, 471 F.Supp. 800, 805 (E.D. Wis. 1979), *aff'd*, 616 F.2d 305, 326 n.31 (7th Cir. 1980).

(5) *The Presence of Collusion in Reaching the Settlement*. The Court may analyze the agreement and the negotiating process to determine whether the agreement is unfair because of fraud or collusion. Here there is no contention by any Settlement Plan participant or by any objector that collusion exists to taint the proposed Settlement Plan.

Certain parties, who are not signatories to the Settlement Plan, and a nonparty teachers' union have expressed chagrin at their absence from the negotiating process that resulted in the Settlement Plan. *See, e.g.*, Proposed Findings of Fact and Conclusions of Law filed by the City of St. Louis on June 1, 1983; Motion to Intervene filed by teachers' union Local 420 on April 18, 1983.

The City of St. Louis did not complain in any manner when the State defendants sought to dismiss the City as a party in this phase of the case. *See* Motion to Dismiss the United States, Craton Liddell, et al., and the City of St. Louis as Parties Plaintiff in the Inter-District Phase of the Litigation, filed by State defendants on May 10,

1982. In fact, the City explicitly joined in the State defendants' motion to dismiss the City as plaintiff-intervenor. The Court denied that motion and the City of St. Louis remained as a plaintiff-intervenor in the 12(c) phase of this case. As a party participant, the City of St. Louis opposes particular provisions of the proposed Settlement Plan.

With regard to the teachers' union, Local 420, it did not seek party status in this case until April 18, 1983. Granted leave to file as *amicus curiae*, Local 420 has intermittently presented its position on various issues throughout the course of this litigation. Recently, the Court denied the union's motion to intervene, and has permitted the filing and consideration of statements submitted by Local 420 regarding the proposed Settlement Plan.

No party complaining of exclusion from any negotiating session has timely sought relief from the Court on this question. The Court views with some degree of skepticism those who wait until two are out in the ninth inning before complaining that they were not asked to name the starting pitcher.

Assuming such exclusion is unusual in multiparty, complex litigation, the Court fails to see how such absence, in and of itself, constitutes collusion or fraud to render a proposed agreement unfair or unreasonable. In this case, moreover, the negotiating process was not initiated or, for the most part, conducted by the parties alone. The Court appointed a nonparty Special Master "to explore the possibility of settlement." This diligent and competent Special Master was assisted in his efforts by a court-appointed Amicus, representing the public interest. The presence of these persons throughout the major part of the negotiating process renders any suggestion of possible collusion or fraud less tenable than in other settlement situations.

(6) *Opinion of Competent Counsel.* In support of the Settlement Plan, counsel for proponents submitted an affidavit, acknowledging their familiarity with the record in the case, the parties' positions in this phase, and the Settlement Plan's terms. In their opinion, the proposed Settlement Plan is a fair, reasonable, and adequate resolution of this phase of the case.

Although the Court may not delegate to counsel the Court's duty and responsibility to determine the adequacy of a proposed agreement, the Court may consider competent counsel's opinion. *Armstrong, supra*, 616 F.2d at 325. Here, the great majority of proponents' counsel have been involved in this case since at least the filing of the interdistrict claims three years ago. All counsel appear to the Court thoroughly familiar with their clients' positions, skilled to conduct this litigation in a competent manner, and knowledgeable of the record of the case and applicable law.

Thus, the Court considers and gives some weight to counsel's opinion, although it is not dispositive and is only one of the several factors considered by the Court in passing on the Settlement Plan's adequacy.

(7) *Class Members' Reaction to the Settlement.* Both white and black members of the classes have participated in these proceedings and some have objected to particular aspects of the proposed Settlement Plan.

Furthermore, at the fairness hearing, Minnie Liddell and Dr. James DeClue, two of the named plaintiffs, acknowledged they had reservations regarding certain provisions of the Settlement Plan but, as an aspect of compromise, they had determined other benefits gained by the Settlement Plan rendered it fair, reasonable, and adequate.

All of the objections have been considered by this Court. The Court recognizes that not all members of the class would approve the proposed settlement. If the



Court would not approve the Settlement Plan without unanimous agreement of the class members, then it could never approve a settlement in this case.

The Court may approve a fair settlement over objections by some or many class members, and even despite criticism by some named plaintiffs. *Armstrong, supra*, 471 F.Supp. at 804, *aff'd*, 616 F.2d at 326. Here, the number of objectors is not undue in the circumstances of this case, given its extensive notoriety, the many thousands of plaintiff class members, the importance of the plaintiffs' claims, and the nature of the litigation. The amount of opposition by class members and members of the community here is comparable to that in *Armstrong* where forty-five persons testified at the fairness hearing and many others submitted written statements, "most to express their dissatisfaction with the settlement," which was ultimately approved as fair. *Armstrong, supra*, 616 F.2d at 326.

(8) *Stage of the Proceedings and the Amount of Discovery Completed.* The Settlement Plan was proposed after extensive discovery was completed and pretrial materials, including synopses of witnesses' testimony, were submitted on behalf of both plaintiff and defendant parties in this phase of the case. Furthermore, both plaintiff and defendant proponents have submitted summaries of the evidence they had intended to offer if this phase of the case proceeded to trial. Also, this phase of the case follows the determination of the State's and City Board's liability for segregated conditions within the City's public schools, and implementation, with appellate court approval, of a mandatory intradistrict remedial plan and two voluntary interdistrict plans.

(B) In light of the voluminous record, prior court orders, and the information derived from the fairness hearing and public statements regarding the Settlement Plan, the Court finds there is sufficient information available

to determine the fairness, reasonableness, and adequacy of the Settlement Plan.

After considering each of the relevant factors set forth above, the Court finds the proposed Settlement Plan is fair, reasonable, adequate, and constitutionally permissible.

### III.

Must the Settlement Plan be approved without alteration? Yes, except insofar as the Court finds technical, perfecting, and non-substantive changes necessary and reasonable. *Cf. Liddell v. Board of Education*, 677 F.2d 626, 634 (8th Cir.), *cert. denied*, 103 S.Ct. 172 (1982). For instance, as a result of the fairness hearing and subsequent documentation, it developed that

(a) \$133,837.17 proposed for the 1983-1984 Settlement Plan budget duplicated amounts proposed in the 1983-1984 intradistrict budget; and

(b) \$246,221.92 proposed for the After-School program was erroneously included as a duplication within the Settlement Plan budget itself; and

(c) \$20,000.00 proposed for bus passes for students attending the as yet nonexistent alternative high school was erroneously included in the Settlement Plan budget. No one could reasonably contend that the Court should approve expensive errors acknowledged by parties to exist.

Of the Plan's twelve major components, Sections I, II, III, V, VI, VII, VIII, IX, XI, and XII are approved without substantive change.

Section IV on Quality Education, and Section X, dealing with Financing, will also be approved with the non-substantive changes noted in the following discussion. When considering quality education and financing, the Court is constantly mindful of two sometimes conflicting restraints:

(a) the Court cannot allow rights guaranteed by the Constitution to be derogated by the action or inaction of the legislative or executive branch;

(b) parties should not gain in Court that which they have legitimately lost in the legislature or at the ballot box.

The Court has considered the financial adviser's recommendations along with the comments filed thereon. The Court-appointed financial adviser, Dr. Warren Brown, recommends the creation of a small committee to approve "all activities, procedures, records and expenditures which are undertaken pursuant to provisions of the SA [Settlement Agreement]." Rather than require the establishment of yet another committee to provide an "approval procedure" under this Plan, the Court finds that such an "approval procedure" is implicit in the powers and responsibilities of the VICC and in the requirement that participants in this Plan exercise their rights and obligations in good faith. This good faith requirement includes efficient handling of the limited resources available to implement the programs, consideration of the quality and stability of implemented programs, and a responsibility to maintain monitoring, review, and accountability practices and procedures. To accomplish these implied requirements, the participants may decide to establish policies and procedures for the whole VICC, or may establish a standing or unrelated committee, or may delegate these functions to one or more staff or committee persons. School administration cannot be static. Flexibility is essential to success.

The financial adviser makes certain recommendations regarding the transition and initial activities of the VICC. To the extent these recommendations mirror several proposals of the Settlement Plan, they are approved.

On magnet schools, the adviser states, in part, that "activating new magnets for 1983-84 should be done de-

liberately *and only after a rigorous needs assessment*" (emphasis added). Section III of the Settlement Plan contains a review and approval procedure if plan participants seek to add to or expand listed magnets in school years after 1984-1985. The review and approval procedure does not explicitly apply to the new or expanded magnets proponents suggest for implementation in the 1983-1984 and 1984-1985 school years. The financial adviser's recommendation is well-taken. Noting that proponents do not mandate, but only suggest, that the listed magnets be created and/or expanded in the next school years, and recognizing the limitations of existing resources and the overall good faith requirement of plan participants, the Court directs plan participants to analyze and review the need of each expanded and new magnet proposed for 1983-1984 and 1984-1985 prior to the program's implementation. Plan participants should balance the need for and benefit of such magnets in light of programs already existing throughout the St. Louis metropolitan area, the need to coordinate recruitment efforts, and limited resources, among other factors.

As an alternative to the Plan's student transfer payment provisions, the financial adviser generally recommends that all state aid payments and trust fund allocations be sent to the student's home district and the home district pay a reasonable tuition to each host district receiving transfer students. This recommendation responds to State defendants' contention that the Plan's financing provisions might overcompensate participating school districts. The Court should insure stable and adequate participation in the Plan without providing an undue financial windfall to district participants. At this time, the Court deems the financing provisions reasonable and adequate to compensate districts for certain costs, particularly start-up costs, attributable to their implementation of this Plan, and will therefore approve the student transfer payment provisions of the Plan's financing section. The Court, however, recommends that the partici-

pants review the financial adviser's suggested alternative, as well as others, after some experience with implementation of the Plan.

The financial adviser generally endorses the State defendants' proposal to reduce transportation costs of inter-district transfer students by zoning or "zipcoding" areas within which students are transported. In practice, this will limit the choice of schools available to transferring students from a given residential area. Because of the limit on student choice and the probable hindrance to school district participants' recruitment efforts, the Court does not approve a transportation plan that effectively limits student choice under the Settlement Plan. Despite the lack of approval for the suggested zipcoding system of transportation, the Court will commend any efforts the parties can make to reduce the costs of transportation, so long as opportunities for, and safety of, the students will not be compromised.<sup>3</sup>

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<sup>3</sup> "Today, for most school children, busing is a convenience provided by the school system. Because of the greater economy and educational benefits achieved through consolidation, the number of schools and districts has declined enormously since the last century, so that today, for over half of the nation's children, the 'neighborhood' school is no longer a reality; the distances to school are such that they ride a bus to school. Less than 7 percent of those children, or 3.6 percent of the total number of school children, are bused for the purpose of desegregation.

"The amount of time spent on school buses and their costs have figured prominently in criticism directed at busing for school desegregation. But statistical studies indicate that the median travel time for elementary school students was less than 15 minutes; only 15 percent of those students traveled more than 30 minutes.

"Critics should also be mindful of the fact that present constitutional law recognizes that a desegregation plan may not mandate busing involving time that would adversely affect the health of the students or the achievement of educational objectives. To the extent unreasonable transportation times are being imposed, then, modifications can and should be sought under existing law.

"The costs of busing have also been grossly misperceived by the public. One witness did a national survey of public attitudes about

In the Appendix to the Settlement Plan, and again in proponents' Exhibit 2, City Board specified programs for the "Improvement of the Quality of Education throughout the St. Louis public schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools." The St. Louis County school district proponents stated that, although they, as well as other parties,

recognize the importance of the concept of the improvements of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court[,] . . . [t]hey do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design.

Despite this apparent lack of agreement on the programs listed in the Appendix and its companion Exhibit 2, those documents contain details of programs listed in other Settlement Plan sections, sections to which all proponents have agreed.

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busing for desegregation, and learned that most people believe that more than a quarter of the school budget is spent on this function. In fact, the percentage is closer to 0.2 percent. Thus, the suggestion that 'the money that is being spent on busing could be directed toward improving that quality of education perhaps through improved teacher salaries or better schools or books . . .' must be recognized as inviting only minor improvements.

"In sum, criticism of busing for desegregation must be considered in light of the following: most American children are bused for non-racial reasons without apparent educational or health harm, or parental disapproval; relative to the total costs of public schools, the costs of busing for desegregation are not great; dissatisfaction with this method is voiced more often by those fearing future orders or otherwise not presently involved, than those participating in such a plan." (footnotes omitted.) Report of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Cong., 2d Sess., Mar., 1982, at 18-19.



For example, Section V of the Settlement Plan, a section to which all proponents agree, contains proposals for the following part-time educational programs: "Pairing and Sharing," "Springboard to Learning," "The School Partnership Program," "Ethnic Heritage," "Radio Station KSLH," "English as a Second Language," "Honors Art," "Honors Music," and "Mass Media." Each of these enumerated programs is also listed in the Appendix and Exhibit 2.

This "double inclusion" situation is also true of the City magnets proposed as new or expanded programs for the 1983-1984 and 1984-1985 school years. The City magnets are listed in both Section III, to which all proponents agree, and the Appendix and Exhibit 2.

To the extent the programs in the Appendix and/or Exhibit 2 are agreed to by all proponents of the Plan, those programs may be immediately implemented in accordance with the terms of the relevant section of the Settlement Plan and any implicit conditions deemed applicable. The Court finds agreement by the proponent plaintiffs and all St. Louis County school districts on such programs, and the Court would expect them to be among the earliest implemented.

The rest of the Quality Education programs should be considered for implementation by the City Board as soon as the proper priorities can be established and plans coordinated for the interdistrict desegregation of schools and the establishment of quality education in the one-race schools remaining.

Pursuant to the financial adviser's recommendations, the Court directs the parties to focus on the following programs at an early date:

#### IMPROVEMENT OF STAFFING RATIOS

A301 Reduce pupil-teacher ratios to county average

A302 Restore art, music, and physical education staff

- A305 Increase nursing and counseling services
- A402 Expand opportunities for all-day kindergarten
- A503 Expand and improve extracurricular athletic activities

#### SPECIAL PROGRAMS FOR NON-INTEGRATED SCHOOLS

- B101 Lower pupil-teacher ratios
- B102 Coordination of instructional and motivational programs
- B201 After-school remedial and enrichment programs
- B203 Summer educational experience
- B205 Parents as teachers
- B206 Peer tutoring
- B208 Role model experiences
- B301 Parent and staff seminars

#### SPECIAL INSTRUCTIONAL PROGRAMS

- A403 Restore after-school tutorial program
- A409 Gateway Summer Institute
- A410 Student leadership
- A501 \* Honors Art and 4th R Gallery
- A601 \* Springboard to learning
- A603 \* Pairing and sharing program
- A604 \* School partnership program
- C103 \* First phase magnet school plan

\* Programs so designated are approved by all proponents.

#### INSTRUCTIONAL SUPPORT SYSTEMS

- A102 Curriculum supervision
- A201 Upgrade library/media service
- A202 Audiovisual services
- A702 Establish a staff development unit

## SCHOOL/COMMUNITY RELATIONS

- A805 Strengthen school-parent-community communications and involvement
- A806 Strengthen the capabilities of the public affairs unit

## PLANNING AND DEVELOPMENT

- A101 Curriculum development
- A401 Develop and implement early childhood education program
- A813 Desegregation planning and monitoring
- A901 Improvement of the quality of school facilities

These enumerated programs should be analyzed and reviewed for immediate implementation, with "immediate" meaning within the 1983-1984 school year. City Board may give priorities to these programs so that some are implemented by September, 1983, some implemented by January, 1984, some before the end of the school year, and others in the 1984-1985 school year. As the financial adviser suggests, the foregoing priorities should be established and programs analyzed so as to maintain the stability and quality of implemented programs for participating students and to limit excesses that may "topple the [quality education] program" through "overload and waste."

By approving proponents' efforts to address and improve the quality of education within the City of St. Louis, the Court is not expressing either endorsement or disapproval of all the programs mentioned in the Appendix or Exhibit 2, nor is the Court intending to limit or preclude consideration of additional quality education programs.

The financial adviser also recommends that City Board complete a long-range study of its plant facilities. To

the extent building and facilities improvements are part of the desegregation remedial effort, the Court endorses such long-range study and planning, especially in light of possible changes that may occur throughout the course of this remedial effort in student and staff populations, as well as regular and specialized educational programs. Thus, the Court accepts the present recommendation and directs the City Board to undertake such long-range analysis and planning as are reasonable and feasible. The Court notes that, in accord with the adviser's suggestion, the funding effort for these facility improvement efforts should come mainly from local revenues, with one-time assistance from the State due both to "unique conditions" within the City and the need to treat equitably all students throughout the St. Louis metropolitan area as part of this desegregation remedial effort.

The financial adviser next recommends the addition of four state supervisors in the metropolitan area to assist implementation of this Plan. The Court does not find such additional staff proposed as part of the Plan presented by proponents, and for that reason does not interject this as a prerequisite to implementation of the Plan. To the extent the State defendants and/or plan participants deem such additional staff advisable, they may consider this recommendation.

The financial adviser recommends that City Board undertake a management study, a particularly internal matter which should be addressed by the City Board, and the Court will not require such an undertaking as part of the interdistrict desegregation plan.

In the Settlement Plan, the parties recognize that successful implementation depends on a sound and equitable financing arrangement. Anticipated transfer of up to 15,000 students, major reductions in student-teacher ratios, development and expansion of magnet schools, renovation of antiquated facilities, and improvements in

curricular offerings within the City schools, as well as other aspects of the Plan, will require substantial additional expenditure of funds for the education of public school children in St. Louis.

Estimates of first year costs range from \$37,000,000<sup>4</sup> (financial adviser) to \$87,000,000 (City School Board) to well over \$100,000,000 (State defendants). Because of the wide divergence and lack of agreement of the estimates, the Court enters no findings or orders at this time regarding the amount of funds likely to be necessary for 1983-1984, except to note that it will be substantial and that difficult decisions will have to be made in order to obtain the necessary amount.

For twenty-nine years, black school children of St. Louis have been urging the fulfillment of the promise of constitutional equality. For twenty-nine years, Missouri has created new programs and expanded old ones with funds that should have gone to students whose constitutional rights have been violated. The constitutional responsibility must now be faced.

The primary responsibility for funding the Settlement Plan rests with those parties who have been adjudicated as liable under the Constitution for segregated conditions within the City's public schools—the State of Missouri and the Board of Education of the City of St. Louis. The sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of a segregated school system. Thus, all proposed expenditures must be justified on this basis.

In no way should any funding provisions presently authorized by the Court be construed to authorize expendi-

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<sup>4</sup> The financial adviser's estimate excludes any amount for attorney's fees for prevailing parties. Within 60 days, attorneys shall file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration.

tures unrelated to City Board's desegregation obligations under the Constitution and the Settlement Plan as approved.

The Settlement Plan provides that the costs are to be shared by the State and the City school board through State funding of various programs and a tax rate increase in the City of St. Louis to be ordered by the Court. In securing the protection of constitutional rights, the Court's responsibility and power to implement a desegregation plan with a directive to increase taxes should be exercised only as a last resort and in a manner designed to assure that taxpayers are not overburdened. The Court has no desire to employ its equitable powers to fine or otherwise punish for contempt, so long as the necessity therefor can be avoided.

This Court has the authority to order the State of Missouri, which has already been adjudicated a primary constitutional violator in causing school segregation in the City of St. Louis, to fund the voluntary interdistrict transfers and improvements in the quality of education in the City schools provided for in the proposed settlement in order to further remedy the State defendant's constitutional violations. *Liddell, supra*, 677 F.2d at 629-30, 641-42. See also *Milliken v. Bradley*, 433 U.S. 267 (1972); *Hills v. Gautreaux*, 425 U.S. 284 (1976); *Liddell, supra*, 667 F.2d at 655; *Reed v. Rhodes*, 500 F.Supp. 404 (N.D. Ohio 1980), *aff'd*, 662 F.2d 1219 (6th Cir. 1981), *cert. denied*, 455 U.S. 1018 (1982). While the State claims it is experiencing financial constraints, it has not responded historically to the educational needs of its school age children. See *Yaris v. Special School District of St. Louis County*, No. 81-423C(1) (E.D. Mo. Mar. 3, 1983), slip op. at 40 n.7 ("... only one state in the Country appropriates less funds than the State of Missouri for its educational system").

This Court has the authority to order the City Board, already adjudged a constitutional violator, to increase its



tax rate, if necessary, as contemplated by Section X(B)3 of the proposed settlement. *Griffin v. County School Board*, 377 U.S. 218, 233 (1954); *United States v. Missouri*, 515 F.2d 1365, 1372-73 (8th Cir.), cert. denied, 420 U.S. 951 (1975). *Accord Wichita Finance & Thrift Co. v. City of Lawton*, 131 F.Supp. 788, 790 (W.D. Okla. 1955); *State ex rel. Martin v. Harris*, 115 P.2d 80, 45 N.M. 335 (1941); *Raynor v. King County*, 97 P.2d 696, 708 (Wash. 1940); *City of Catlettsburg v. Davis' Administrator*, 91 S.W.2d 56, 262 Ky. 726 (1936); *Town of Flagstaff v. Gomez*, 242 P. 1003, 1004 (Ariz. 1926); *City of Long Beach v. Lisenby*, 179 P. 198, 200 (Cal. 1919) (which hold that a court may raise the tax levy of a governmental unit even above state-imposed constitutional and statutory tax rate maximums in order to satisfy a judgment against the governmental unit for breach of an involuntary obligation). But see *State v. City of Mound City*, 73 S.W.2d 1017, 1024 (Mo. 1934) (en banc). The authority to exercise such power may well be questioned when based on anything less than the protection of federally guaranteed constitutional rights. "State policy must give way when it operates to hinder vindication of federal constitutional guarantees." *North Carolina State Board of Education v. Swann*, 402 U.S. 43, 45 (1971); see *Haney v. County Board of Education*, 429 F.2d 364, 368 (8th Cir. 1970).

This Court has previously ordered the use of surplus revenues in the City Board's bond retirement account for funding of its 1980 desegregation order, and the Court of Appeals has affirmed. *Liddell, supra*, 491 F.Supp. at 353; *Liddell, supra*, 667 F.2d at 655.

At this time, the Court declines to order a City Board tax rate increase beyond the rate imposed during the 1982-1983 year, but reserves the option to do so at a later date should City Board lack sufficient revenues or surplus so that Court action becomes necessary to prevent a denial of constitutional rights. The City Board

would, of course, apply any surplus found on hand first to relieve itself of its status as a constitutional wrongdoer by alleviating segregated schools and providing improved quality education.

The financial adviser estimates new revenues for the City Board as follows:

*Anticipated New Revenues*

A. It is estimated that the City Board will experience revenue increases in 1983-1984, in addition to current local, county, and State sources, as follows:

1. State sales tax (Proposition C) (\$9,254,000-2,693,000)	\$6,561,000
2. Home district incentive payments (3,000 x \$550)	1,650,000
3. Local revenue increase	1,100,000

In addition, an existing debt service levy of \$0.17, scheduled to be retired in February, 1984, could support a new \$20,000,000 bond issue amortized over twenty years without an increase in property taxes, according to this Court's financial adviser.

Finally, a recommendation by the proponents that the City Board be directed not to reduce its operating levy equal to one-half of sales tax revenues under the recently approved state-wide referendum (Proposition C), Mo. Rev. Stat. § 164.013, could generate an estimated \$9,254,000, according to the financial adviser. *See, e.g.*, Mo. Rev. Stat. § 164.013, providing that a property tax rollback not occur until school boards make "any other adjustments that may be required by any other law."

Assuming these estimates do not turn out to be overly optimistic, it is entirely possible that the City Board could have at its disposal in 1983-1984 more than \$38,000,00 for implementing its share of the Settlement Plan without the necessity for increasing the current property tax rate within the City of St. Louis. The

Court is aware these estimates assume that anticipated tax decreases of \$0.17 (scheduled bond issue retirement) and approximately \$0.58 (property tax rollback equal to one-half of sales tax revenues under Proposition C) will not occur as scheduled. The Court also notes that, pursuant to State law, a bond issue requires a two-thirds majority vote for passage.

Should a tax increase become necessary, available alternatives noted by the financial adviser include the following:

A. Increase the total rate by \$1.71. This was approved by 51% of St. Louis voters in June 1982.	
	\$26,505,000
B. Increase the total rate by \$1.83 to equal the average rate of St. Louis County districts.	
	28,365,000
C. Increase City tax rates in three funds to equal average adjusted, pupil-weighted ratios in St. Louis County:	
1. Teacher fund (65 cents more)	10,075,000
2. Building fund (11 cents more)	1,705,000
3. Debt service fund (12 cents more)	1,860,000

No one likes to pay the piper, but sooner or later it must be done. Mark Twain told the Public Education Association in 1900:

the [Russian] Government had decided that to support the army it would be necessary to withdraw the appropriation from the public schools. This is a monstrous idea to us. We believe that out of the public school grows the greatness of a nation.

It is curious to reflect how history repeats itself the world over. Why, I remember the same thing was done when I was a boy on the Mississippi River. There was a proposition in a township there to discontinue public schools because they were too expensive. An old farmer spoke up and said if they

stopped the schools they would not save anything, because every time a school was closed a jail had to be built.

It's like feeding a dog on his own tail. He'll never get fat. I believe it is better to support schools than jails.

"Great American Speeches, 1893-1963," at 23, edited by John Graham, Meredith Corporation, copyright 1970.

The following financing plan shall be implemented:

1. The City Board shall certify to the Court, by July 15, 1983, the amount needed to meet its share of the costs of the Settlement Plan and the tax rate necessary to fund these costs along with its other obligations;

2. The City Board shall submit to the voters by February 1, 1984, a proposed bond issue of an amount determined by City Board as sufficient to meet the most pressing capital improvement needs of the City schools, as identified in Exhibit 2 as part of City Board's constitutional obligation to desegregate.

3. Should the bond issue fail to obtain the required two-thirds majority, the Court will consider an appropriate order to obtain the funds reasonably necessary to meet the capital expenditures incurred by City Board in meeting its constitutional obligation to desegregate.

4. The City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis on July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Mo. Rev. Stat. § 164.013. The amount of revenue retained by City Board by reason of not reducing its operating levy in the City of St. Louis pursuant to Mo. Rev. Stat. § 164.013 shall be utilized to fund programs under the Settlement Plan that are implemented to meet City Board's constitutional obligation

to desegregate the City's public schools. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984.

5. In the event the above steps fail to raise the necessary funds to satisfy the City Board's share of the implementation costs, the Court will enter an appropriate order, following notice and an opportunity to be heard on the amount, to increase the property tax rate in the City of St. Louis by an amount necessary to fund the City Board's share of the costs of the Settlement Plan.

#### IV.

##### *Conclusion*

If we have been sufficiently honest and open-minded in recognizing our problems, and

If we have been sufficiently creative in conceiving new solutions, and

If we are now sufficiently purposeful in putting those solutions into effect,

We can reach our goals.

The history of American education is the long, turbulent record of a nation that was not afraid to risk failure or trouble or confusion in pursuit of a goal that at first seemed wildly impractical: to give every American child a chance to develop to the limit of his or her ability.

Life never was a series of easy victories. We cannot win every round or arrive at a neat solution to every problem. But driving, creative effort to solve problems is the breath of life, for a civilization or an individual. John W. Gardner, *No Easy Victories*, chapters 5, 12, 14, at 30, 67, 78 (1st ed. 1968).

"This [plan] is not perfect, but the sun has its spots, a diamond has its flaws, gold will not rust, and the good will shine through." Congressman Emanuel Celler, Brooklyn, New York, 1888-1981, (Member of Congress 1923-1973).

Dated this 5th day of July, 1983.

/s/ William L. Hungate  
United States District Judge



## APPENDIX A

I. *Intradistrict Phase*

In 1972, Liddell plaintiffs, on behalf of black children eligible to attend or attending the City's public schools, as well as their parents, initiated this lawsuit as a class action against the Board of Education of the City of St. Louis (City Board). Liddell alleged that the City Board and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis in violation of plaintiffs' rights under the fourteenth amendment. The Court certified this plaintiff class by order dated October 3, 1973.

In 1977 the Court granted Caldwell representatives, including the NAACP, the Adams group, the City of St. Louis, and the United States leave to intervene as plaintiffs in this case. The Court, upon several parties' motion, also added the State of Missouri, the Commissioner of Education of the State of Missouri, and the State of Missouri Board of Education as parties defendant. In 1980, upon several parties' motion, the Court added as parties defendant: the Governor, the State Attorney General, the State Treasurer, individual members of the State Board of Education, the Commissioner of Administration of the State of Missouri, and the Special School District of St. Louis County.

In 1980, the City Board and State of Missouri were found liable for the establishment and maintenance of a racially segregated public educational system within the City of St. Louis, in violation of plaintiffs' constitutional rights. *Adams v. United States*, 620 F.2d 1277 (8th Cir.) (en banc), cert. denied, 449 U.S. 826 (1980); *Liddell v. Board of Education*, 491 F.Supp. 351, 357, 358, 359-60 (E.D. Mo. 1980), aff'd, 667 F.2d 643, 654-55 (8th Cir.), cert. denied, 454 U.S. 1081, 1091 (1981). To rem-

edy this constitutional violation, the district court ordered the implementation of a mandatory desegregation plan within the City of St. Louis public school system, with funding for implementation of this plan shared equally by City Board and State. *Liddell, supra*, 491 F.Supp. at 353. Additionally, the Court directed City Board and State defendants to develop and submit plans to alleviate the segregated conditions through interdistrict transfers between the City and suburban school districts. *Id.* at 353-54. See also *Adams, supra*, at n.25 and n.27 at 1294-95 and accompanying text, 1296 (noting expert's opinion that interdistrict transfers would result in most stable desegregation plan); *Liddell, supra*, 491 F.Supp. at 356 (noting district court's and parties' general agreement with the appellate court's finding that "based upon the evidence, an interdistrict remedy has the best chance of permanently integrating the schools in the metropolitan St. Louis Area"). In accordance with its 1980 remedial order, the district court has already approved implementation of two interdistrict plans:

(a) the 12(a) voluntary plan involving transfers among fifteen St. Louis County school districts and the City school district, with funding provided by the State alone, Order H(226)81, dated July 2, 1981, *aff'd, Liddell v. Board of Education*, 677 F.2d 626, 629-30 (8th Cir.), *cert. denied*, 103 S.Ct. 172 (1982); and

(b) the 12(b) vocational education plan involving transfers between the City school district and the Special School District of St. Louis County, with funding provided by the State, the Special School District, and City Board, Order H(181)81, dated June 11, 1981, *aff'd, Liddell, supra*, 677 F.2d at 632-39.

This litigation is now in the 12(c) interdistrict phase, which involves mandatory interdistrict efforts to remedy the segregated conditions found to exist within the City. With regard to this phase of the case, the United States

Court of Appeals for the Eighth Circuit has recently stated that:

the district court can require existing defendants—the state and the city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict transfer.<sup>39</sup> To the extent that suburban schools are willing to cooperate, the plans requiring their participation can now go forward.

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<sup>39</sup> These possible remedies are given as examples only. They are not intended to represent an exhaustive list. The district court may adopt other remedies that are appropriate.

*Liddell, supra*, 677 F.2d at 641-42.

## II. *The Interdistrict Litigation.*

By Order H(337)81, the Court permitted City Board and Caldwell to file their interdistrict claims and to add certain parties defendant. The added defendants include St. Louis County, certain St. Louis County government officials, and the following St. Louis County school dis-

tricts: Affton, Bayless, Brentwood, Ladue, Lindbergh, Hancock Place, Hazelwood, Jennings, Maplewood-Richmond Heights, Mehlville School District R-9, Normandy, Parkway, Riverview Gardens, Rockwood, Valley Park, Webster Groves, and Wellston. The St. Louis County school districts of Clayton, Ferguson-Florissant, Kirkwood, Ritenour, Pattonville, and University City are subject to stay orders and have not been added as defendants at this time. The Court also stayed litigation as to St. Charles and Jefferson Counties, including each school district in those counties, and as to certain housing authorities. On September 24, 1981, the Court granted City Board's motion for realignment as a plaintiff in the interdistrict phase of the case only.

City Board's crossclaim and Caldwell's amended, supplemental, and cross complaint for interdistrict desegregation are similar. In general, they seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful,"

(b) injunctive relief for the development and implementation of a remedial plan, and

(c) an award of attorney's fees and expenses.

The pleadings assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact" a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). They further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. To support these contentions, the City Board and Caldwell pleadings point to student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, failures or refusals to consolidate school dis-

strict boundaries, among other alleged acts or omissions of defendants. Caldwell also alleged that it brought its claims on behalf of students and their parents within the metropolitan area.

For these claims, City Board and Caldwell define the "St. Louis Metropolitan Area" to include St. Louis City, St. Louis County, St. Charles County, and Jefferson County.<sup>1</sup> Since stay orders have been entered against St. Charles and Jefferson Counties and named defendants therein, the "St. Louis Metropolitan Area," as artificially defined for purposes of this case, is now limited to the geographic area encompassed by the boundaries of St. Louis City and St. Louis County. *See* Order H(337)81, dated August 24, 1981; *see also* H(1183)82, dated August 6, 1982; H(1985)83, at 4, ¶ 1, dated January 25, 1983. These plaintiffs assert that the causes of action arise from "the equal protection" provisions of 42 U.S.C. § 1983 and the thirteenth and fourteenth amendments; the "full and equal benefit" provisions of 42 U.S.C. § 1981 and the thirteenth amendment; the real property rights of 42 U.S.C. § 1982; and the protection afforded to federally funded programs by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

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<sup>1</sup> When we speak of the St. Louis metropolitan area, we are plagued with imprecise terms. The commonly used definition of the Office of Management and Budget of the St. Louis Standard Metropolitan Statistical Area (SMSA) includes St. Clair, Madison, Jersey, Monroe and Clinton Counties in Illinois. Under proper circumstances, federal courts may order intracity school desegregation, and they may, under proper circumstances, perhaps order inter-county school desegregation. This Court is unaware of precedent for interstate school desegregation. So referring to the St. Louis metropolitan area, which ordinarily includes a part of Illinois, is not altogether useful.

Franklin County, Missouri, qualifies under the standard definition of the St. Louis SMSA, and for undisclosed reasons, plaintiffs did not seek to join Franklin County, Missouri.

The active defendants denied the alleged constitutional violations. Defendants would have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each St. Louis County school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

The class action issues in this phase of the case were referred to United States Magistrate David D. Noce pursuant to 28 U.S.C. § 636(b)(1)(A). After three days of hearings, the Magistrate recommended in relevant part that:

“(a) the NAACP amend its pleadings within seven days only to the extent necessary to satisfy standing requirements for an organizational plaintiff; if such amendment is not made, the NAACP should be dismissed as a plaintiff-intervenor for failure to satisfy the standing requirements;

(b) Lillie Mae Caldwell satisfies the standing requirements necessary to pursue this litigation as a plaintiff-intervenor; Minnie Liddell, Lois LeGrande and Samuel Yarber, as parents of children in the public school system, satisfy standing requirements to pursue this litigation as Liddell plaintiffs; the children of these remaining named Liddell plaintiffs should be substituted for the children on whose behalf these remaining Liddell plaintiffs were originally named as next friends;

(c) the Liddell class, as originally certified, may continue to prosecute this litigation; and

(d) the interdistrict claims set forth in the amended complaint of Caldwell plaintiff-intervenors, H(351)81, are properly maintained as a class action under Rule 23(a) and 23(b)(2). The District Court



should certify the Caldwell class as comprising all students, and their parents, now attending or who will attend Missouri public primary and secondary schools located in the metropolitan St. Louis, Missouri area."

After due consideration for defendants' objections to Magistrate Noce's Report and Recommendation and for Caldwell's motion to amend its pleadings, filed in response to that Report and Recommendation, the Court adopted the Report on February 9, 1983, H(2085)83. Also in accordance with Magistrate Noce's recommendation, the proposed substitution of certain named representatives for the Liddell class was subsequently approved. H(2356)83, dated May 4, 1983.

Pursuant to the mandates of the United States Court of Appeals for the Eighth Circuit to proceed with inter-district liability proceedings, and this Court's order of August 6, 1982, the Court set the 12(c) liability phase of this case for trial on February 14, 1983. As of February 14, 1983, the active St. Louis County school districts included Bayless, Hazelwood, Mehlville, Riverview Gardens, Rockwood, Valley Park, and Webster Groves. The other St. Louis County school districts were subject to stay orders. *See, e.g.*, H(336)81, dated August 24, 1981; H(1365)82, dated September 17, 1982; and H(1978)83, dated January 20, 1983.

Prior to this first trial setting, the Court, *sua sponte*, appointed Professor D. Bruce La Pierre Special Master and director of a settlement conference program for this case only. Thereafter, settlement discussions took place. From time to time, at the request of the Special Master, joined by the parties, the Court postponed the trial scheduled for February 14, 1983, to provide the parties the opportunity to resolve their differences on the pending issues. On February 22, 1983, the settling parties submitted an Agreement in Principle which was approved at that time by each of the proponent plaintiffs and all St.

Louis County school districts except Riverview Gardens. The Special Master subsequently, on March 30, 1983, filed a proposed Settlement Plan. By April 4, 1983, the Liddell, Caldwell, and City Board plaintiffs, twenty of the twenty-three St. Louis County school districts, including Riverview Gardens, and the St. Louis County defendants advised the Court of their unconditional acceptance of the Settlement Plan. One school district, University City, initially declined to sign the Settlement Plan, but accepted it on June 1, 1983. Two school districts, Mehlville and Rockwood, suggested conditions, and the question arises whether those conditions are inconsistent with the Agreement in Principle. Counsel for Rockwood and Mehlville have insisted that these districts are signatories to the Settlement Plan, have accepted that agreement, and are not seeking a modification of it. By their conditions, Mehlville and Rockwood desire either to advise the Court of particular concerns which each has, or to ask the Court to interpret certain parts of the Settlement Plan. The Court declines to give advisory opinions. The State of Missouri, the City of St. Louis, and the United States have advised the Court that they would not sign the Settlement Plan.

The proposed Settlement Plan is limited to the 12(c) phase of this litigation and does not include St. Charles and Jefferson Counties, against which plaintiffs' inter-district claims have been stayed. *See, e.g.*, H(336)81, dated August 24, 1981; and H(1365)82, dated September 17, 1982. The special education programs of the Special School District will be dealt with hereafter. The proposed Settlement Plan also does not involve the paragraph 12(d) housing issues and the housing defendants against which plaintiffs' claims have been stayed.

### III. *Fairness Hearing*

On April 8, 1983, this Court scheduled a fairness hearing to begin April 28, 1983, at which evidence concerning the Settlement Plan was to be presented. The Court's

order also provided for publication of notice to plaintiff class members of the proposed agreement and fairness hearing. The notice was published twice in each of thirteen newspapers having circulation throughout the St. Louis metropolitan area, and was sent by registered mail to each person or group who submitted written comments on the Agreement in Principle in compliance with the relevant Court order. The Court also required that a copy of the proposed Settlement Plan be made available to the public at each school within the St. Louis metropolitan area. In addition to the formal notice provided by this Court, the proposed Settlement Plan received extensive media coverage throughout the St. Louis metropolitan area (*see* Memorandum Decision filed April 28, 1983, with the Order of the same date, H(2343)83, and Exhibit 4 containing a collection of newspaper articles concerning the Settlement Plan). Judging from the public response as evidenced by both the participation at the fairness hearing and the submission of written comments, there was more than sufficient notice to and opportunity for interested citizens to be aware of the relevant issues and/or to convey their respective positions.

At the five-day fairness hearing, the Court heard from both proponents and opponents of the proposed Settlement Plan. The opposing evidence included eleven persons from the local community, some of whom presented statements on behalf of organizations. Furthermore, the Court received forty-two written statements regarding the proposed Settlement Plan from interested citizens and organizations. The Court granted parties until June 1, 1983, to file proposed findings of fact and conclusions of law and received four such pleadings.

## APPENDIX B

We are all gravely concerned with the costs involved in coming into compliance with federal constitutional standards in the desegregation of schools. This concern should be placed in proper perspective.

In the book *Inside U.S.A.*, written in 1947, John Gunther wrote of the resourcefulness with which Missourians can address educational problems:

"Negroes call Missouri a 'southern state with northern exposure.' It was a slave state in 1860, and laws prohibiting intermarriage between black and white are on the books. Segregation is the rule in schools, theaters, restaurants, and hotels; on the other hand there is no Jim Crow in transportation. Conductors on southbound trains try, however, to persuade Negroes to sit in the same car, to save the trouble of moving them into a Jim Crow Coach when the South proper is reached.

"The most interesting over-all aspect of the Negro issue in Missouri is in education. The situation is moderately complex. The University of Missouri at Columbia refuses (like all southern state universities)<sup>1</sup> to admit Negroes. The University of Kansas at Lawrence, Kansas, does admit them. The University of Kansas City (Missouri) does not admit Negroes, nor does Washington [University] in St. Louis. St. Louis University (Catholic) does. At Jefferson City, some thirty miles from

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<sup>1</sup> "In Missouri for the first time in these pages we touch the South. This is emphatically a border as well as a middle western state. 'Missouri would lose something if the Civil War were ever entirely settled,' wrote the Kansas City *Star* not long ago. The Missouri boot heel digs directly into what is veritably the 'old' South, and one region is called 'Little Dixie.' Missouri came into the union as an offset to Maine. The War Between the States split it savagely asunder; it gave 118,000 troops to the Confederate army, 116,000 to the federal. In blunt fact the Bushwackers and others in Missouri fought their own Civil War, within the state's own frontiers, and traces of this still show." (footnote omitted.)

Columbia, is Lincoln, a state university exclusively for Negroes. In 1936 a Negro named Lloyd Gaines, on being graduated from Lincoln, applied for admittance to the University of Missouri law school. He was refused. He thereupon sued the university. The case reached the Supreme Court, which in 1939 made a[n] historic ruling, to the effect that the state of Missouri was obliged to give its citizens, white or Negro, equal educational facilities. But a loophole continued to exist, whereby the state could pay the tuition of a Negro at some institution *outside* the state, instead of admitting him to one of its own white schools; this is the reason why so many Missouri Negroes go to the University of Kansas. But the Gaines case made further action necessary. Missouri was forced to set up a branch of its law school *for Gaines alone*, in St. Louis!—in order that the campus at Columbia should continue to remain lily white. This must be the only case in history of a school designed for a student body consisting of one person. Gaines, however, did not appear in St. Louis to take up his unique position.

“Then a lively young girl named Lucile Bluford, at present on the staff of the *Kansas City Call*, applied for admittance to the University of Missouri school of journalism, which is incidentally one of the best in the nation. The registrar did not recognize her application as being from a Negro, and she was accepted. Then, when the school term opened and she arrived on the campus, she was promptly informed that she could not, of course, be admitted. Miss Bluford renewed her application, was refused, and then sued the university. To evade implications of the suit, the state then set up a separate school of journalism at Lincoln—which still exists—again with the intent of keeping, at all costs, any Negroes from infecting the home campus. This segregated school of journalism had only five or six students to begin with; yet it had to be specially maintained with a staff of teachers and the like. Miss Bluford, however, would not attend the ersatz school. It was set up for undergraduates and

she was qualified to be a graduate student. So she applied for admittance to the university's graduate school. Again she was refused. So she filed another suit. Fearing to lose the suit, in which case it would have to accept her, the university proceeded to abolish (temporarily) its own graduate school of journalism.

"Lest this whole episode appear purely incredible, as well as asinine, we should point out again that Missouri is a border state. When we reach the South it will become clearer why such monstrous procedures continue to exist." John Gunther, *Inside U.S.A.*, ch. 22, pp. 354, 356-67 (1st ed. 1947).



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APPENDIX C

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

September Term, 1983

No. 83-1957EM/2033/2118/2140/2220/2554

CRATON LIDDELL, *et al.*

vs.

*Appellees,*

STATE OF MISSOURI, *et al.*

*Appellants.*

Appeal from the United States  
District Court for the  
Eastern District of Missouri

JUDGMENT

[Filed Feb. 8, 1984]

This appeal from the United States District Court was submitted on the record of the said District Court and briefs of the parties and was argued by counsel.

In consideration whereof the judgment of the district court is affirmed in part and reversed in part and this matter is remanded to the district court for action consistent with the opinion. The City Board, the City of St. Louis, the North St. Louis Parents and Citizens for Quality Education, and the St. Louis Teachers Union Local 420 will each bear their own costs on appeal. All other costs of appeal shall be taxed to the State of Missouri. The mandate of this Court shall issue forthwith.

[SEAL]

February 7, 1984

A True Copy

ATTEST: /s/ Michael E. Graves  
Chief Deputy Clerk, U.S. Court of  
Appeals, Eighth Circuit

APPENDIX D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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No. 72-100C (4)

CRATON LIDDELL, *et al.*,  
*Plaintiffs,*

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS,  
STATE OF MISSOURI, *et al.*,  
*Defendants.*

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SETTLEMENT AGREEMENT

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## I. Purpose and Definitions

## A. Purpose

This detailed implementation plan is submitted by the signatories as an agreement to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims [H(348)81, as amended; H(351)81, as amended; and H(1027)82, as amended] and to implement the Agreement in Principle H(2141)83 as required by the Court's Orders H(2142)83, H(2214)83. The establishment of programs and the funding of this settlement agreement is under the authority of paragraph 12(a) of the May 21, 1980 Order as amended as well as the orders and decisions relating thereto and the provisions contained in this agreement. The Agreement in Principle provides:

## AGREEMENT IN PRINCIPLE

*FIVE BASIC ELEMENTS OF  
A FINAL SETTLEMENT*

In reviewing the five basic elements of the proposed final settlement, two preliminary points bear special mention. First, the five basic elements are at best statements of broad principles, and many significant subsidiary issues and details still must be resolved even if the parties reach an agreement on the major principles. Second, there are four critical propositions that have not yet been incorporated in five elements and that would be incorporated explicitly in a final settlement: (1) no court-ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability, (2) the 23 suburban school districts in St. Louis County will continue to exist, and (3) the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be ordered by the Court, (4) black students in suburban school districts that have a minority enrollment of 50% or greater would enjoy the transfer rights.

1. *The suburban school districts in St. Louis County would agree to accept black transfer students up to their Plan Ratio within 5 years.*
  - a. Under the Plan Ratio, which is employed in the 12(a) voluntary plan, a suburban school district would accept up to as many black transfer students as would constitute 15 percent of the total student population in that district, but no suburban school district would be required to accept more black transfer students than would raise the overall percentages of blacks in the total student population higher than 25 percent. The effect of the Plan Ratio may be illustrated by considering several hypothetical suburban school districts with different existing racial ratios. If Suburban School District X has a student population that is 3% black, it would accept up to as many black transfer students as would constitute 15% of the total student population in District X and the percentage of black students in District X would then be 18%. If Suburban School District Y has a student population that is 10% black, it would accept up to as many black transfer students as would constitute 15% of the total student population in District Y, and the percentage of black students in District Y would then be 25%. If Suburban School District Z has a student population that is 15% black, it would accept up to as many black students as would constitute 10% of the total student population in District Z and the percentage of black students in District Z would be 25%. If a Suburban School District has a student population that is already 25% or more black, it would not be required to accept any black transfer students.
  - b. All student transfers under this element shall be voluntary.

- c. This first element of the settlement would provide an opportunity for a substantial number of black students in the city to attend school in the county. On the basis of Fall 1980 data, application of the Plan Ratio to all twenty-three suburban school districts would provide an opportunity for approximately 17,500 black students to transfer to county schools. This estimate is probably too high because there has been a decline in total student enrollment and an increase in black enrollment after 1980, and 15,000 is a reasonable working figure.
- d. One significant distinction between this first element of the settlement proposal and the 12(a) plan should be noted. Under the 12(a) plan, a suburban school district can refuse to accept black transfer students if it does not have "space available" even if it has not yet reached the Plan Ratio. There is no "space available" condition on interdistrict transfer under the proposed settlement.
- e. Each school district will adopt academic and disciplinary standards to assure equitable treatment of all students.

2. *Establishment of Magnet Schools.*

- a. New magnet schools in addition to the magnet schools established under the intradistrict order and under the 12(a) plan would be created.
- b. In addition to providing special education programs for city students, the purpose of the magnet schools is to attract white transfer students from the county. If white students transfer to city magnet schools, there will be an opportunity to provide desegregated education for a larger number of black children (approximately 15,000



black students would remain in all one-race schools even if 15,000 black students transferred to county schools), and there would be greater equity in the assignment of the burdens of transportation.

- c. Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings. The final settlement agreement will describe with specificity magnet programs and their locations.
3. *Improvement of the quality of education provided by the city school system and special provisions to improve the quality of education for students in one-race schools.*
- a. The settlement will contain specific provisions for improving the quality of education provided by the city school system and for restoring its AAA rating. No exhaustive list of specific provisions has been drafted yet, but reduction of the pupil/teacher ratio to the state's standard for an AAA rating or to county average, whichever is lower and an early childhood (birth to age 4) education program suggested in the past by the State are examples of the type of provisions under consideration.
  - b. Since there are now approximately 30,000 black children in one-race schools in the city, some of these students will remain in all one-race schools on the north side of St. Louis even if 15,000 black students transfer to county schools and other students attend integrated magnet schools. The set-

tlement plan will include special provisions to improve the quality of instruction received by black students who attend one-race schools.

- c. Several recent reports and documents provide a basis for assessing the needs of the city school system. See Desegregation Monitoring and Advisory Committee, The Effects of the City Board's Budget and Staff Reductions on the Implementation of the Desegregation Plan, January 24, 1983 [H(1982)83]; City Board's Motion to Order Adjustments in the State Funding of the Desegregation Plan, [H(1979)83]. The State's report on the AAA rating of the city school system will also provide [sic] information about needs. These reports and documents coupled with the efforts of the plaintiffs will provide a basis for drafting specific provisions to improve educational quality.

4. *Provisions to ensure that the proposed settlement will be carried out fully and fairly and that it will have a substantial impact.*

- a. It will include (1) provisions requiring the suburban school districts to recruit black transfer students from the city and to promote voluntary transfers of white county students to city schools and (2) provisions requiring the plaintiffs to promote interdistrict transfers and, (3) non-enforceable annual targets by each school district for achieving the Plan Ratio.
- b. It will also include fiscal incentives designed to encourage interdistrict transfers.
- c. All districts will adopt procedures to ensure equitable treatment of all students.
- d. FACULTY
  - 1. Goal: Each school district shall establish goals whereby the percentage of blacks employed as

- (1) teachers and (2) administrators shall equal a percentage based on the actual ratio of black and white personnel in each of such categories presently employed or on leave of absence in the city and suburban school districts or the ratio of such black and white personnel as established by a labor market study.
2. The goal would be accomplished through the development of an enforceable affirmative plan which shall include provisions for recruitment of black personnel and yearly hiring ratios. (1:1, 1:2, 1:3, etc.). Departures from such ratio may be justified, among other grounds, if a district demonstrates that it has hired the best qualified candidate for any position.
3. Means: (A) Normal hiring—subject to state law.
- (B) Incentives for voluntary teacher transfers.
- (C) If necessary, allocation by the Court of fiscal incentive funds (that would not be available to suburban school districts but for the settlement plan) to the hiring of minority teachers.
4. Obligations under this provision shall terminate at such time as either the hiring or pupil goals have been achieved.
- e. The City Board would be invited to join the Co-operating School Districts for the St. Louis Suburban Area, Inc.
- f. An annual report will be filed with the Court concerning the steps taken to implement the settlement.
- g. The final settlement plan shall recognize
- (i) That the State will, within the limits of its authority, encourage the construction of

housing which shall advance the integration of neighborhoods, and

- (ii) That the parties with housing responsibilities shall not take any action to interfere with the implementation of this settlement plan.

\* \* \* As to the housing issue, there is no agreement between the State, the County, and the City Board, the Caldwell and Liddell Plaintiffs.

[Statement made by Special Master in Court]

- h. Voluntary transfer students under this settlement plan shall not be assigned by the receiving district in a manner that contributes to racial segregation within the district.
- i. An agreement in principle to identify options for students in majority black schools within school districts that are not predominately black to enjoy transfer rights within the district comparable to those that exist in the predominately black county districts.

## 5. STAY

1. Litigation will be stayed for five (5) years to permit full implementation of voluntary transfers, magnet schools, quality education, whatever teacher provisions—in essence, a stay while implementing elements 1, 2, 3 and 4. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

2. Goal: The goal is a minority enrollment of 25% for districts that currently have less than a 25% minority enrollment.

3. *If a district reaches the PR within five years, it gets a final judgment declaring that it has satisfied its pupil desegregation obligations. The plaintiffs agree to seek no further pupil desegregation relief*

through litigation. The school district's only continuing obligation is to comply with the specific obligations stated in elements 1, 2, 3 and 4, and to make continued efforts to reach the goal stated in paragraph 2. The Court would relinquish active supervision two years after the five-year period.

4. *If a school district does not reach the PR, then*

(a) Monitor will begin to prepare reports and recommendations, based on hearings at which all interested parties shall have the opportunity to be heard, in September of the fifth year so that the reports, the recommendations, and the negotiation process can be completed by the end of the fifth year.

(b) Parties will negotiate;

(c) Only after (a) and (b) can plaintiffs renew the litigation, in which case

(i) they must prove liability, and

(ii) they agree not to seek school district consolidation or reorganization and they agree not to seek a remedy beyond the 25% goal of paragraph 2, and any remedy would distribute the burdens of desegregation equitably, between the minority and the non-minority students in the school districts involved in the litigation under this paragraph.

(iii) In devising any remedy the Court would consider the monitor's report and it would be entitled to weight.

The Court's approval of any agreement shall determine that the Liddell, Caldwell, and the City Board Plaintiffs are entitled to "reasonable" attorney's fees and costs of litigation to be paid exclusively by the State after full hearing on attorney's fees.

## B. Definitions

For purposes of this settlement agreement, the following terms are defined below:

"Enrolled" refers to those students that are enrolled in the participating districts' public schools.

"Home District" means the participating district which is the district of residence of the student transferring to another district pursuant to this plan or the district of employment of a teacher or administrator who transfers to another district pursuant to this agreement.

"Host District" is the participating district which receives a student, teacher or administrator who transfers from another district pursuant to this agreement.

"Participating District" means those school districts that are signatories to the agreement.

"Students" means kindergarten, full time elementary and full time secondary students in public schools in the City of St. Louis and St. Louis County, unless the term is specifically designated to refer to non-public school students. For the purpose of permitting voluntary inter-district transfers by county pre-school children to the city and for the purpose of education of city pre-school children pursuant to Parts III and IV, the term "students" also includes pre-school students.

## II. *Voluntary Interdistrict Transfers*

### A. *Plan Goal and Plan Ratio*

#### 1. *Definitions*

- a. The "Plan Goal" is a racial ratio of 25% black students and 75% white students.
- b. The "Plan Ratio" is an increase of black student enrollment of fifteen percentage points or achievement of the Plan Goal, whichever is less.



## 2. *Plan Ratio and Plan Goal for Each Participating District*

- a. The calculation of the plan ratio and the plan goal for each participating district is based on total resident enrollment (broken down into white resident enrollment and black resident enrollment) as of September 30, 1982 (State Report Date). Total resident enrollment for each participating district includes tuition students, and white resident enrollment includes non-black minority students. Transfer students under the 12(a) plan are not included in the resident enrollment data. Transfer students under the 12(a) plan are counted separately as part of a participating district's efforts to achieve its plan ratio and plan goal under this settlement agreement. The plan ratio and the plan goal of each participating district stated in subsections b. - c. are based on the percentage of black resident students enrolled in that participating district on September 30, 1982. The plan ratio will be used to calculate, on the basis of then current enrollment data and as set forth in section 4, the number of interdistrict transfer students that each participating district must accept.
- b. The plan ratio and the plan goal of each participating district in which the black resident student enrollment was less than twenty-five percent on September 30, 1982 are:

<u>Participating District</u>	<u>Plan Ratio</u>	<u>Plan Goal</u>
Afton	15.15% Black	25.00% Black
Bayless	15.15%	25.00%
Brentwood	25.00%	25.00%
Clayton	16.27%	25.00%
Hancock Place	15.34%	25.00%

<u>Participating District</u>	<u>Plan Ratio</u>	<u>Plan Goal</u>
Hazelwood	25.00%	25.00%
Kirkwood	25.00%	25.00%
Ladue	25.00%	25.00%
Lindbergh	15.79%	25.00%
Mehlville	15.32%	25.00%
Parkway	16.98%	25.00%
Pattonville	18.72%	25.00%
Ritenour	25.00%	25.00%
Rockwood	15.95%	25.00%
Valley Park	15.48%	25.00%
Webster Groves	25.00%	25.00%

- c. The plan ratio does not apply to participating districts in which the black resident student enrollment exceeded twenty-five percent on September 30, 1982.
- i. Participating districts (with their percentage black enrollment as of September 30, 1982) in which the black resident student enrollment exceeds fifty percent are: Jennings (55.10% black), Normandy (86.92% black), St. Louis City (79.47% black), University City (77.15% black), and Wellston (99.45% black). At the time this settlement agreement is approved by the Court, these participating districts, other than the City of St. Louis, are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under Section VI A-H. The continuing obligations of these participating districts, other than the City of St. Louis, shall be limited to the establishment of such magnet programs designed to increase white student

enrollment and to cooperation in the recruitment process to facilitate the transfer of black students enrolled in their district to participating districts whose enrollment is less than twenty-five percent black, consistent with the provisions of Parts II and III.

- ii. Participating districts in which the black resident student enrollment exceeds twenty-five percent but is less than fifty percent are: Ferguson-Florissant (40.55% black), Maplewood-Richmond Heights (28.97% black) and Riverview Gardens (42.60% black). At the time this settlement agreement is approved by the Court, these participating districts are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under Section VI A-H. The continuing obligation of these participating districts shall be limited to cooperation in the recruitment process, consistent with the provisions of Part II, to facilitate the transfer of white students enrolled in their district to participating districts whose enrollment is greater than fifty percent black and to facilitate the transfer of black students in their district pursuant to Section XIF hereof. If the black enrollment in any one of these three districts should exceed fifty percent, then its black students would enjoy transfer rights under Section II, and the participating district would be subject under subsection c(i) by participating districts in excess of fifty percent black enrollment as of September 30, 1982.

3. *Implementation of the Plan Ratio and the Plan Goal by Participating Districts and Determination of Annual Targets*

- a. Unless its plan ratio is achieved earlier, each participating district identified in section 2b, at the time it prepares enrollment estimates for the next school year but not later than a time to be specified by the Recruitment and Counseling Center, shall:
  - i. estimate the total resident enrollment to be reported on the State Report Date, white resident enrollment (number and percentage), black resident enrollment (number and percentage) and the number of voluntary transfer students who will continue as students in the participating district.

The total resident enrollment figure shall include tuition students. The resident white enrollment figure shall include all non-black minority students, but it shall not include voluntary transfer students. The term "voluntary transfer students" includes all students who transferred to another district under the 12(a) plan or who transfer to a participating district under this settlement agreement. Such white voluntary transfer students shall be included in the enrollment figures of the participating district in which they actually attend school. The resident black enrollment figure shall not include black voluntary transfer students;

- ii. estimate the number of black voluntary transfer students necessary to achieve its

plan ratio established by section 2b. according to this formula:

$$\frac{X + Y}{X + Y + Z} = \text{Plan Ratio}$$

In this formula, X represents the number of black voluntary transfer students necessary to achieve the participating district's plan ratio, Y represents the number of black resident students as determined under subsection a(i), and Z represents the number of white resident students as determined in subsection a(i). After the number (X) of voluntary black transfer students necessary to achieve the plan ratio is determined, this number is then reduced by the number of black voluntary transfer students who have previously transferred into the participating district and who will remain enrolled in the participating district in the next school year; and

- iii. establish annual targets for achieving the plan ratio in each of the remaining years. For each year prior to the fifth year of this settlement agreement, each participating district shall determine its own annual targets based on its plan ratio, and each participating district may state preferences for particular numbers of students at particular grade levels that the Recruitment and Counseling Center may consider, in addition to the prior achievement of the plan goal by any participating district, in assigning voluntary transfer students to participating districts in a manner consistent with the voluntary transfer student's rights to choose particular partici-

pating districts and schools. Each year each participating district shall report its annual targets and preferences to the Recruitment and Counseling Center by a date specified by the Recruitment and Counseling Center. These annual targets for achieving the plan ratio are non-enforceable.

- b. Each school year each participating district identified in section 2b, unless it has a plan ratio lower than its plan goal and has not yet achieved its plan ratio, shall calculate separately the number of black voluntary transfer students necessary to achieve its plan goal and non-enforceable annual targets for achieving its plan goal. This calculation shall be done consistently with the methods established in subsection a, except that the plan goal shall be substituted for the plan ratio in the formula set out in subsection a(ii).
  - c. Each school year each participating district identified in subsection c(i) of section 2 shall calculate the number of white voluntary transfer students necessary to achieve its plan goal and non-enforceable annual targets for achieving its plan goal.
4. *Determination of Achievement of a Participating District's Plan Ratio*
- a. At the end of each school year during the first five years of this settlement agreement, each participating district identified in section 2b. shall determine on the basis of enrollment data as of the last day of school prior to graduation the percentage of black student enrollment according to the following formula:

$$\frac{A + Y}{A + Y + Z} = \text{Percentage Black Student Enrollment}$$



In this formula, A represents the actual number of black voluntary transfer students attending a school in the participating district, Y represents the actual number of black resident students determined consistently with section 3a(i), and Z represents the actual number of white resident students determined consistently with section 3a(i).

- b. The actual percentage of black student enrollment as calculated under subsection a shall be employed under Section XII in determining whether a participating district has equalled or exceeded its plan ratio established in section 2b.

**B. *Eligibility and Priorities Regarding Interdistrict Transfers Other Than To Magnet Schools and Programs***

**1. *Purpose***

The purpose of this provision is to assure opportunities for interdistrict transfer for black students in the City of St. Louis who have obtained an intradistrict judgment against the City Board and the State relating to the City of St. Louis and for black students in predominantly black school districts who have had asserted on their behalf a claim for interdistrict relief in the pending litigation.

**2. *Eligibility***

- a. Black students who are members of the racial majority at a school in any participating district which district is 50 percent or more black in its enrollment shall be eligible to transfer voluntarily to a school and district in any other participating district in which school and district they would be in the racial

minority on the conditions set out in Section II.B.3. The provisions of Section II shall govern the operation of these voluntary inter-district transfers.

- b. White students who are members of the racial majority at a school in a participating district which district is more than 50% white in its enrollment shall be eligible to transfer voluntarily to a school and district in any other participating district in which they would be be [sic] in the racial minority.
- c. Students who have demonstrated disruptive behavior in their home district will be prohibited from voluntary interdistrict transfer. Prior to the transfer of any student the home district shall issue a statement that the transferring student is in good standing and has no record of recent disruptive behavior which would interfere with the operation of the program.
- d. Students who apply for interdistrict transfer who are currently withdrawn from school will be evaluated by the Recruitment and Counseling Center and permitted to transfer if there is no evidence of disruptive behavior. If there is evidence of prior disruptive behavior, these students may be permitted to transfer on a provisional basis as a probationary transfer student at the discretion of the Recruitment and Counseling Center, subject to no further disruptive behavior.
- e. Handicapped students who are served by the Special School District and the City Board who are not Phase 1 students shall be provided for pursuant to the agreement between the Special School District and the plaintiffs.

- f. Transfers are not limited to students in public schools.

### 3. *Priorities*

If in any school year, the number of eligible black students applying for interdistrict transfers exceeds the total number of spaces remaining under this settlement agreement, spaces shall be allocated among districts under the following formula:

A calculation shall be made for each majority black district of the number of black students currently attending schools that are 50% or more black in their enrollment. Ratios shall then be established for each district based upon the number of black students attending 50% or more black schools as a proportion of the total number of such students in all majority black participating districts. Spaces shall then be allocated according to the ratio. If the number of applications from any district is fewer than those it would be entitled to under the ratio, the excess spaces shall be redistributed to the remaining districts according to the same ratio.

- 4. The eligibility and priority provisions contained herein do not apply to magnet schools and programs. Separate eligibility and priority standards for magnet schools and programs are set out in Section III.

## C. *Placement of Voluntary Interdistrict Transfer Students*

### 1. *Application for Transfers*

- a. Each year during a period specified by the Recruitment and Counseling Center, every public school student in St. Louis City and St. Louis County who is eligible to transfer

to another district will be asked to indicate if he/she wishes to transfer to another district. Eligible white city and county public school students will be provided with information about magnet school offerings in the city and county. Eligible black city and county public school students will be given information about regular schools in predominantly white county districts and all magnet schools.

## 2. *Student Choice*

- a. If the student wishes to transfer he/she will complete a transfer application and return it to the Recruitment and Counseling Center by a specified date. These applications will be time-stamped and processed by the Recruitment and Counseling Center according to the provisions of this agreement.
- b. If a student indicates that he/she wishes an interdistrict transfer to a regular school, the student may:
  - i. Request that the Recruitment and Counseling Center select the district and school to which the student will be assigned.
  - ii. Specify up to three choices of school districts and two school choices within each district.

## 3. *Actual Assignment to District, School and Grade*

- a. Every effort will be made to honor each student's first choice of district and/or school. If a student has indicated no choices, other than the wish to transfer, the Recruitment and Counseling Center will assign students first into those districts with the larger discrepancies between current enrollments and the plan goal.

- b. Assignments first will be made according to the spaces in schools and grade levels identified by the host district to achieve its annual target. These will be matched against all choices indicated by the student.
- c. If students remain unassigned after the above step, the host district for the student's first choice will be required to take the student as long as the placement will not exceed for that particular grade level 15% of the host district's annual target or exceed the annual target of the host district.
- d. If the student cannot be accommodated in the first choice district, the same procedure applied to the first choice district in preceding paragraph c shall be applied to the second choice district if one has been indicated. If the student cannot be accommodated in the second choice district the same procedure will be applied to the third choice district, if one has been indicated.
- e. If the student cannot be assigned under these conditions, or if the student does not accept the assignment provided, the student may request that he/she be placed on the waiting list for one particular district. Students on the waiting list will be processed on a first come/first served basis in accordance with the overall placement criteria.

D. Equitable Placement

- 1. The student's opportunities for success will be the major goal when determining student placement.
- 2. Voluntary transfer students shall not be assigned by the host district in any manner that contributes to racial segregation.

3. In assigning students to schools, black voluntary transfer students (except those assigned to magnets) shall not be assigned to a school in which the black enrollment exceeds by more than 15 percent the plan goal for the district as a whole.
4. The host district shall honor the grade placement for the student as certified by the home district, which shall be communicated to the parent prior to transfer. Any preliminary evaluation of the student which might suggest modification of the student's placement also will be provided to the host district prior to transfer. If, during the first semester, testing, performance, remedial efforts, and consultation with all parties in interest indicate that an adjustment of grade placement should be made, it shall be made after the first semester in consultation with the student's parents, and preferably with parental consent.
5. School districts shall use tests that meet prevailing professional standards and such tests shall be used in accordance with the publisher's instructions.

#### E. Tenure

1. The commitment to accept a student shall be for the duration of the student's voluntary participation in the plan. Once a student exercises his or her right to participate in the plan, the student will continue in said plan, subject to the provisions of subsection 3, until the student affirmatively withdraws from participation as herein set out. Students will not have to transfer each year or exercise a transfer choice to remain in the host district. Students participating in this plan shall be encouraged to continue to participate at their initial school of choice. It is expected that the student will follow the pattern of



assigned schools for the resident students in the school in which the transfer student first enrolls.

2. Subject to the provisions of subsection 3, students who have elected to transfer under this plan shall remain students of the host district until they choose to return to the district where they reside.
3. Host districts shall not have the authority to remand transfer students to the home district. Host districts shall have the authority to suspend or expel a transfer student using the same due process procedures applicable to resident students.

#### F. Standards

1. Once admitted, transfer students will be expected to meet the same general standards, academic and other, as applied to students of the host district.
2. Information about each district's academic and disciplinary policies and procedures will be provided to the Recruitment and Counseling Center and made available to prospective transfer students on request. This should include information on pupil-teacher ratios, promotion and retention, counseling assistance, grading, student code of conduct, disciplinary action, and suspension and expulsion.
3. The host district shall respond to the educational needs of students without regard to their status as a transfer or resident student. Transfer students shall be eligible and encouraged to participate in all school programs funded and sponsored by the host district (academic, athletic, extra-curricular and other) and shall not suffer any disability or ineligibility because they are voluntary interdistrict transfer students. Participation in after-school activities will be facilitated by the provision where needed of extra-curricular

buses or other forms of transportation. This provision is not intended to require transportation to or from an evening event that occurs subsequent to and separate from the regular school day.

4. In cases involving suspension greater than ten days in length or expulsions, the Recruitment and Counseling Center shall assist students and their parents in understanding their due process rights.
5. Participating districts shall apply disciplinary standards and procedures in a nondiscriminatory manner and in accordance with the Missouri state laws on suspension and expulsion, Sections 167.161 and 167.171.

### III. *Magnet Schools*

#### A. *Purposes of Magnets*

1. Preamble—Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings.

2. The purposes of including magnet schools and programs are the following:

a. To increase the desegregation of the schools in the Metropolitan area of St. Louis.

b. To provide broader educational opportunities to students in the metropolitan area.

3. Among the assumptions guiding this proposal are the following:

a. A magnet school may be a whole staff, curriculum and facility or a part of a school, as with a magnet pro-

gram. Magnet schools and programs may also be part time and may serve student populations part time at hours other than the regular school day.

b. Magnets will host students on a city and county-wide basis. Insofar as is supportive of the desegregation effort, students will have an opportunity to attend magnets.

c. No more than 20,000 students may be served by magnets, divided as follows:

i No more than 15,000 from grades 6-12

ii No more than 5,000 from pre-school to grade 5

iii Of the 20,000 students which may be served by magnets, a minimum of 12,000 shall be served by City magnets, and no more than 8,000 shall be served by county magnets.

d. The composition of student enrollment in each magnet school or program shall be 50% black and 50% white, with an allowable variance of not more than plus or minus 10%.

e. Program themes of the magnet list schools established hereunder shall be as diverse as educational planning and imagination allows, but participation of successful study at a magnet school at any level shall not prevent a student from subsequent study in different, regular fields of instruction. Thus, every magnet school shall provide basic and general academic preparation within its own site or in conjunction with nearby schools.

### *B. Themes*

The following magnet schools and programs are authorized but not mandated for 1983-84 and 1984-85. Such list may be rearranged or reduced, but may not be expanded without review and approval by the magnet review committee:

## 175a

1983-84

<u>CITY</u>	<u>Grade</u>	<u>Target Enroll.</u>
Action Learning and Career Education	K-8	450
Foreign Language Experience School	K-8	275
Classical Junior Academy	2-8	549
Montessori I	Preschool-3	350
Expressive/Receptive Arts	K-8	450
Visual and Performing Arts Middle	6-8	315
Academic and Athletic	6-8	175
Visual and Performing Arts High School	9-12	550
Naval Jr. ROTC	9-12	400
Visual and Performing Arts Center	K-5	485
Individually Guided Ed. I	K-8	415
Individually Guided Ed. II	K-8	450
Health Careers	11-12	300
Math, Science and Technology	9-12	475
Academy of Basic Instruction I	K-8	310
Academy of Basic Instruction II	K-8	345
Academy of Basic Instruction III	K-8	410
Investigative Learning Center	K-5	415
Investigative Learning Center Middle	6-8	315
Management Academy	11-12	300
Metro High School	9-12	200
Foreign Language (Roosevelt)	9-12	450
Mass Media (McKinley)	9-12	200
Classical Academy (Soldan)	9-12	150
<u>COUNTY</u>		
Print and Broadcast Journalism (Kirkwood)	6-12	100
Extended Opportunity School (Clayton) (night)	9-12	200

176a

<u>COUNTY</u>	<u>Grade</u>	<u>Target Enroll.</u>
Global Studies (Valley Park)	7-12	50
Language Arts Enrichment (Valley Park)	5-6	25
Instructional Media Laboratory School (Webster G.)	9-12	150
Television Production (Webster G.)	9-12	75
Early Childhood Microcomputer Immersion (Webster G.)	K-4	100-110
Microcomputer (Pattonville)	6-8	45-65
School Leadership (University City)	9-11	90
6th Grade Camp (part time) (University City)	6	880
Instrumental Music (summer) (Normandy)	9-12	200
BEST Basic (summer) (Normandy)	7-8	150
Vocational Assessment (after school/summer) (Normandy)	9-11	100
Computer Math-Language- Vocabulary (Ritenour) (Saturday)	4-6	70

1984 SUMMER

Summer Program for Voluntary Transfer (Parkway)	1-10	400-600
Math and Science (summer) (Normandy)	6-8	100

1984-85 (In addition to 1983-84 List)

<u>CITY</u>		
Foreign Language Experience School II	K-8	275
Montessori II	Preschool-3 (replicate)	400
Visual and Performing Arts Middle	6-8 (replicate)	315
Individually Guided Education I	Convert to K-5	415

## 177a

<u>CITY</u>	<u>Grade</u>	<u>Target Enroll.</u>
Individually Guided Education II	Convert to K-5	450
Individually Guided Education	6-8 (New location)	500
Visual and Performing Arts High School (Relocate to larger facility)	9-12	1,000
Naval Jr. ROTC (Relocate to larger facility)	9-12	1,000
Military Academy Middle (New Magnet School)	6-8	400
<u>COUNTY</u>		
Aerospace Education (Lindbergh)	9-12	400-500
Mobile TV Production & Demo Lab (Wellston)	9-12	12-15
Business and Office Practice (Wellston)	9-12	25
Peer Counseling Institute for Students (Wellston)	?	25
Metals and Foundry (Hancock Place)	9-12	45
Early Childhood Training (Maplewood-Richmond Hgts.)	3-4 yr. olds	100
International Baccalaureate Program (University City)	11-12	100
Aerospace (Normandy)	7-8	200

*C. Planning*

1. New magnets or expansion of magnets already existing may be provided for the school years 1984-85, 1985-86, 1986-87 and 1987-88 under the provisions of this plan by a process as described in the following paragraphs.

2. The process for approval of new magnets or expansion of existing magnets requires that applications be filed with a magnet review committee which shall have final authority over approval or disapproval of



such magnets. The magnet review committee (hereinafter sometimes referred to in Section VI as the "magnet review committee" or "the committee") will report its decision as to whether or not applications are to be approved to the applying district and the Voluntary Interdistrict Coordinating Council.

3. Applications for 1984-85 magnets may be filed with the committee immediately upon the approval of this agreement by the Court and until December 15, 1983. On or before February 1, 1984, the committee shall render its decision on 1984-85 magnets. Each year thereafter, applications shall be filed with the committee no later than December 15, for programs beginning in the succeeding fall and the committee's decision shall be rendered on or before February 1.

4. There shall be six persons serving on the magnet review committee. Two persons representing the City Board, two persons representing county school districts, one person collectively representing the N.A.A.C.P., the Caldwell Plaintiffs, and the Liddell Plaintiffs, and one person representing the State, shall constitute the review committee. The committee shall choose its chairman annually and shall make such reports to the Voluntary Interdistrict Coordinating Council as may be required.

5. The magnet review committee shall use at least these criteria in judging the applications for new magnets or expansion of existing magnets:

a. The extent to which the magnet will promote the desegregation effort.

b. The educational need of the students and the balance of educational opportunities.

c. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

d. The non-duplicated nature of undersubscribed magnet schools or programs.

e. The cost effectiveness of the programs related to the number of students served.

6. The district may seek approval for a planning grant for the purpose of devising a magnet school or program. The committee, in cooperation with the State Department of Education, has the sole authority to approve such grant and set the amount which shall mean that the district shall not face competition from similar planning or development effort during the period shown on the grant.

#### *D. Evaluation*

1. The magnet review committee shall biannually review the quality of magnets and report to the host school and the Voluntary Interdistrict Coordinating Council as to the improvements that are recommended in magnets and/or whether or not a magnet should be terminated. Such reports shall be included with the annually published common orientation booklet.

2. In preparation of the biannual review, the host school shall submit to the magnet review committee information on at least these criteria:

a. To the extent to which the magnet has promoted and will promote the desegregation effort.

b. The quality of the magnet as measured by student outcomes.

c. The educational need of the students and the balance of educational opportunities.

d. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

e. The non-duplicated nature of undersubscribed magnet schools or programs.

f. The cost effectiveness of the program related to the number of students served.

#### *E. Planning and Evaluation of Staff*

1. The magnet review committee shall be a standing committee of the Voluntary Interdistrict Coordinating [sic] Council and shall initially have the assistance of the following staff: one senior educational planner, one senior educational evaluator and no fewer than three support staff.

2. The staff shall report directly to the Executive Director of the Voluntary Interdistrict Coordinating Council and shall function to assist the review committee in its planning and review of applications and its evaluation of magnets. In addition, the staff shall coordinate with the personnel responsible for student assignment.

#### *F. Administration*

Each magnet school or program shall be under the control of the host district board of education as to theme, level, continued existence, administration, staffing, and location.

#### *G. Protection of Local Programs*

Magnet school themes and curriculum shall not be construed to prevent or inhibit the continuation of, or changes in, programs or curricula in non-magnet schools or programs.

#### *H. Public Information*

Magnet list schools shall be publicized annually in a common orientation booklet and through city-wide and county-wide visitation and presentations to interested parents and students.

### *I. Common Application*

A common, uniform application form shall be devised by the Recruiting and Counseling Center(s) and distributed as part of the magnet orientation booklet. No one shall be admitted to a magnet school who has not completed this application.

### *J. Student Eligibility for Magnets*

1. All students whose race is in the majority in their assigned school and district, except as provided in paragraph (d) hereof, shall be eligible for acceptance into a magnet school in a district in which their race is in the minority if: (a) their home district signs a statement attesting to no record of recent disruptive behavior; (b) if any identified special needs are diagnosed as no more severe than Phase I; (c) they meet such qualification requirements as may have been approved by the Magnet Review Committee as specifically appropriate to some magnet themes; (d) in addition to the above, (i) white students in the City of St. Louis are eligible to attend City magnets if they are enrolled in a school in which the white enrollment is either 0-10% or over 50% and (ii) black students in majority black districts are eligible to attend magnets hosted in other majority black districts if all host district black students who have applied have been accepted and slots for black students remain in said school.

2. Students residing in the city or county who are enrolled in non-public schools shall be eligible if they meet the above conditions and if space in a magnet remains available after all public school applications have been processed for a given term.

### *K. Priority of Acceptance*

The present enrollment of existing magnets will be given first preference. If in any school year the num-

ber of eligible black students applying for magnets hosted by a majority white district exceeds the total number of spaces remaining, the spaces shall be allocated among the majority black districts under the formula set forth in Section II.B.3.

*L. Reserved Seats*

Up to 30% of the seats in any magnet shall be reserved initially for eligible applicants residing and enrolled in the public schools of the host district. This proportion shall not be deemed a restriction on the host district enrollments and the reserve seats may be allocated to out-of-district applicants if fewer than 30% apply.

*M. Continuation of Educational Programs*

A student who completes one term in a magnet school in good standing within the code of conduct shall be continued in the school until graduation or until parents or guardian applies for transfer whether or not such magnet continues to be a part of this agreement.

*N. Assignment and Tenure*

1. If a student indicates that he/she wishes to transfer to a magnet school, the student may indicate up to three school choices.

2. Each district shall, by a date specified by the Recruitment and Counseling Center, report to the Recruitment and Counseling Center the target enrollment and available slots by grade level and race for any magnet schools operated by the district.

3. Magnet applicants will be assigned based on processing each student's choices with the slots available in the magnets. Students who remain unassigned will be placed on the magnet waiting list and processed on a first come first serve basis.

4. Students who are enrolled in magnet schools shall be eligible to apply for a transfer to other magnet schools.

5. Kindergarten pupils in magnet schools will not automatically be promoted to the first grade in that magnet school, except where the magnet program specifically permits.

6. Students who graduate from a magnet school shall be eligible to transfer to a similar magnet school at the next grade level with first priority and without the necessity to reapply.

7. Students who graduate from a magnet school shall be eligible to transfer to any other magnet school at the next grade level with first priority, but must reapply.

8. Students in a magnet school which is divided into several schools or expanded in grade levels shall have first priority to transfer and without the necessity to reapply.

IV. Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools

*Introduction*

The parties recognize the importance of the concept of the improvement of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court. The City Board has developed a program of the kind and scope to satisfy Section III of the Agreement in Principle and it is attached hereto as an Appendix. However, the St. Louis County School districts do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design. The parties agree that the Appendix forms a basis for setting forth a detailed implementa-



tion program to improve the quality of education in the St. Louis Public Schools. More detailed information, including budgetary matters, will be reviewed as the implementation schedule is developed and the hearing on funding provisions is held. A summary of the Appendix follows:

1. *Strengthen the Long-Range Planning Capabilities of the District*

Proactive planning is essential to the future of St. Louis Public Schools—a school system which is experiencing declining enrollments, declining revenues and aging facilities. The school system operates within the context of a Court ordered intracity desegregation plan and is preparing to participate in a metropolitan-wide voluntary settlement plan which extends the promise of an end to Court supervision within seven years. In this complex array of circumstances, the ability of the school system to provide quality educational experiences for the children and youth of the community rests in large measure on its ability to predict future events and circumstances and to plan accordingly. The planning must be logical, systematic and comprehensive to ensure that scarce human and material resources are targeted effectively and efficiently toward the achievement of the school system's objectives. This will require the development of a strong and dynamic planning component and the service units to support it.

The Long-Range Planning Unit will serve a central management support function and will be structured and equipped to facilitate the design of the future of the school system. The unit will address the need for consistent and focused direction for development and implementation activities within the school system and

for the coordination of objectives and activities among support units in schools. It will address the need to organize for the efficient and effective use of human and material resources. The unit will also fulfill the need to expand and utilize the findings of research and evaluation in developing projects and programs. It will facilitate planning which extends from goal-setting, needs assessment and problem analysis to the formulation of objectives and the design of strategies to achieve them. The unit will facilitate a systematic, logical approach to decision-making which draws heavily upon the analysis of data and information including demographic trends, availability of resources and evaluate feedback.

One of the major tasks of this unit will be the planning necessary to ensure the coordination of objectives and activities related to the implementation of the effective schools concept in all public schools in the City of St. Louis.

## 2. *Reduction of Pupil-Teacher Ratios, Staff Selection and Performance Assessment*

The pupil to classroom teacher ratios in integrated regular schools and in magnet schools will be lowered over the next five years to 25:1. The pupil-teacher ratio in non-integrated schools will be lowered to 20:1 within the next five years.

The first step in the reduction of pupil-teacher ratios throughout the school system will be taken in 1983-84 when pupil-teacher ratios will be reduced to those in effect in 1981-82. Current pupil-teacher ratios and those proposed for 1983-84 are as follows:

### 1982-83

Kg. — 30:1  
1-3 — 35:1  
4-12 — 35:1

### 1983-84 (1981-82 Level)

Kg. — 25:1  
1-3 — 26:1  
4-12 — 30:1

Absent an allowance for the loss of students who would transfer to County districts, it is estimated that 350 additional teachers would be needed to lower the ratios as planned for 1983-84. The actual number of additional teachers needed should be considerably less than 350; however, that number can only be determined when the number of students who transfer to the County and the number of County students who transfer to the City is known. For example, should 3,000 students transfer to County districts in 1983-84 and 500 County students transfer to the City, the net loss of City students would be 2,500. This would reduce the need for additional staff to change the pupil-teacher ratios to the proposed 1983-84 levels by an estimated 93 teachers.

The reduction of pupil-teacher ratios will require the opening of additional classrooms, at least initially. As the net enrollment declines through the transfer of students to and from the County, the need for additional classrooms and additional teachers should decrease.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

Pupil-teacher ratios in pre-schools would be 15:1 per session for both teachers and aides.

The reduction of class size will facilitate more efficient classroom management and provide for greater time on learning tasks which is essential to the mastery of cognitive skills.

### *Staff Selection*

Staff selection criteria and procedures will be reviewed and strengthened to ensure high standards for the selection of new staff. The criteria will, among other things, relate directly the requirements of the effective schools model, the strong emphasis on teaching basic skills and high expectation for students and staff.

### *Performance Evaluation*

The instruments and processes for the assessment of staff performance will be evaluated and revised where necessary to assure high performance standards.

## 3. *Effective Schools Model*

An effective schools model which has been adopted in urban areas across the country and piloted in certain St. Louis Public Schools will be adopted as the major emphasis for all St. Louis Public Schools.

This generally accepted model identifies five characteristics of effective schools and delineates steps to take to ensure that these characteristics prevail.

- (1) *Strong administrative leadership* is ensured through a self-assessment process, through appropriate inservice training and through continuous assessment of the impact leadership has on the total operation of the school.
- (2) *High teacher expectations* is a two pronged thrust. Teachers must have high expectations for their own performance which flows from strong, effective administrative leadership. Of equal importance is the belief that teachers must have high expectations for

students they teach. Inservice orientation for teachers will be designed to promote techniques for helping students acquire high self-expectations. Team planning, guided by inservice consultants, should provide methods which promote the positive attitudes which lead to the acquisition of basic skills.

- (3) *Positive school climate*, the third characteristic of effective schools, flows from the first characteristics. Schools having strong administrative leadership, teachers with high expectations for themselves and students, and staffs that plan cooperatively have the basic elements for a positive school climate. This characteristic is specifically treated in inservice training sessions for staff and parents are also involved at this step.
- (4) *Emphasis on basic skills*, another of the characteristics of effective schools undergirds the interrelates with each of the other characteristics. All constituents—administrators, teachers, students and parents—are made aware that basic skills acquisition is a number one priority. The scope and sequence of skills adopted by the system guide each individual school as staffs work to ensure that students in their school will attain those skills which are required system-wide. Strengths and weaknesses in basic skill areas are assessed so that appropriate emphasis will be given to attaining skills where there are deficits and that skills that are acquired are maintained.
- (5) *Ongoing student assessment* is also characteristic of effective schools and is carefully

planned and implemented. This characteristic is ensured through participation in the system-wide testing program, of course. But of equal importance are mastery tests prepared by teachers or such tests as are integral components of curriculum materials and those assessment tools accompanying the Competency Based Education materials in use system-wide.

The implementation of the Effective Schools Model requires sufficient, well trained staff working together to provide the best possible education for future productive citizens. As the characteristics of effective schools infuse the total school system, the major goals of the system will inevitably be met.

#### 4. *Provisions for a Full Complement of Staff*

As previously stated, the implementation of an effective schools model requires that sufficient staff be available to schools implementing that model. The St. Louis Public School System was required because of serious financial deficits to reduce staff. This section speaks to restoring staff and ensuring that a full complement of staff is available. A previous section has addressed lowering pupil teacher ratios and providing sufficient regular classroom teachers who are carefully selected and assessed in an ongoing effort to assure effective schools.

It is a fact accepted by educators, parents, students and community that whereas the development of the cognitive basic skills is the top priority of school systems, there are additional facets of education requiring the attention of public school staffs.



Accordingly, the restoration of such specialized staff as art, music and physical education teachers will fill the void which currently exists in the provision of quality educational experience in these areas. Students will have the opportunity to develop related skills as fully as possible.

Likewise, extra-curricular programs such as intramural sports and interscholastic athletics are important in the broad context of providing worthwhile life-long interests and skills for students. To fulfill this obligation of effective education, coaching positions at the secondary level will be reinstated.

Students entering the formalized structure of first grade with prerequisite skills will profit from the emphasis on basic skills in all effective school settings. Therefore, sufficient staff to provide all day kindergarten programs for all students entering the St. Louis Public Schools will be provided.

Acknowledging that there are children with handicapping conditions and further acknowledging that these children are worthy human beings deserving of the best educational services, consideration is given to providing sufficient staff to meet the educational needs of these children. Whether handicapping conditions are orthopedic, sensory, emotional or intellectual, they must be effectively addressed. Staff will be available in the public school system to address these needs to the extent required.

Support staff required for meeting basic needs of students will be reinstated as needs indicate. In this category are school nurses, social workers, psychologists and psychological examiners.

Implementing an effective schools model necessitates such ancillary staff.

Additionally, support staff at a central level required to ensure long-range planning efforts, curriculum development, staff development and evaluation and assessment of staff and students will be hired and reinstated as required.

All considerations related to raising staff to full complement will strengthen the concentrated efforts to achieve the goal of improving the quality of education throughout the school system.

#### 5. *Curriculum Development*

A five-year plan has been developed for the revision of curriculum. Curriculum development will be interdisciplinary in approach and will be supportive of the effective schools concept. Efforts will address the refinement of scope and sequence charts for the basic skills, the need for the frequent assessment of student progress and the means for conducting such assessments.

Curricula will also be developed for the Early Infant/Parent Centers and Pre-School Centers which will be established to serve families throughout the City. These centers will provide programs which are designed to ensure that children will be prepared to benefit fully from their educational experiences in the formal kindergarten through grade twelve program.

Measures to improve the quality of education must include efforts to ensure the access of students to adequate learning resources and a rich variety of learning experiences. The City Board proposes to improve and expand its library and other media resources and services and to conduct programs which provide access to the rich

educational experiences available through cultural and other community institutions. Programs to promote computer literacy will be provided as will expanded programs in career education and cooperative education.

#### 6. *Staff Development Division*

Strong support for curriculum development and implementation will be found in the establishment of a Staff Development Division. The major goal of the Division will be to provide effective schools orientation, prepare staff for local school assessment relative to the characteristics of effective schools and prepare staff for planning local school strategies for the attainment of those characteristics for each school. Curriculum development and revision, the lowering of pupil-teacher ratios, the rehiring of staff, the hiring of new staff and staff exchanges, will result in significant alterations to the environment of the classroom teacher and the building administrator and will require educators at all levels to utilize new information and/or techniques in the performance of day-to-day activities.

The Staff Development Division would have the following goals:

- a. To assist in the implementation of the effective schools program in all schools within the system by providing individual school staffs with the necessary training they need to put the program into effect. By working closely with the building staff, Staff Development will ensure strong support for the effective schools program.
- b. To train staff in newly developed or revised curriculum.

- c. To address the specific staff training needs in non-integrated schools.
- d. To address human relations needs specifically as part of the new educational environment.
- e. To address any other aspects of the new educational environment in schools.

All of these goals would be pursued through the provision of inservice sessions for large groups, single school or department inservice sessions, and individualized follow-up sessions for teachers, administrators or other staff.

## 7. *Facilities*

The St. Louis Board of Education has a responsibility to efficiently operate, maintain and improve, where necessary, in excess of 9 million square feet of aged building facilities on over 135 separate sites, housing integrated, non-integrated and magnet schools.

The general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age. This situation can better be understood by examination of some very basic data and information as follows.

Age Distribution of Basic Operating Facilities  
of the St. Louis Public Schools

Period of Basic Construction	Age Range	Approx. Building Area	Approx. % of Total
Prior to the turn of the century	83 to 112 yrs. old (17 bldgs.)	845,000	9%
	7 non-integrated		
	5 integrated		
	3 magnet		
	2 alternative		

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Period of Basic Construction	Age Range	Approx. Building Area	Approx. % of Total
Between 1900-1908	75 to 83 yrs. old (22 bldgs.) 8 non-integrated 10 integrated 4 school support facility	1,434,000	15%
Between 1908-1918	65 to 75 yrs. old (20 bldgs.) 8 non-integrated 6 integrated 6 magnet	1,646,000	19%
Between 1918-1933	50 to 65 yrs. old (31 bldgs.) 11 non-integrated 8 integrated 8 magnet 2 alternative 2 school support facility	2,516,000	26%
Between 1933-1948	35 to 50 yrs. old (13 bldgs.) 5 non-integrated 3 integrated 2 magnet 3 school support facility	681,000	6%
Between 1948-1967	16 to 35 yrs. old (39 bldgs.) 28 non-integrated 2 integrated 4 magnet 4 school support facility 1 alternative	2,238,000	24%

Most notably, the data show that:

Nearly one fourth of the building area of the St. Louis Board of Education is over 75 years old. This building area alone compares to the total district building area of some of the largest and newest metropolitan area county districts.

Nearly one half of the building area of the St. Louis Board of Education is over 65 years old.

More than two thirds of the building area of the St. Louis Board of Education is over 50 years old.

Moreover, nearly one tenth of the building area of the St. Louis Board of Education was built before the turn of the century with four basic facilities over 100 years old.

The aged facilities of the St. Louis Board of Education are currently in a severely deteriorated and sometimes dilapidated physical condition and are in immediate need of not only a major deferred maintenance program, but also a general improvement, renovation and modernization program.

*The Relationship of Efforts to Improve Educational Quality to the Upgrading of Facilities*

Every effort should be made to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process. This is accomplished through providing buildings and grounds which are safe, clean, attractive, clement, healthful, efficient, and functional in terms of the current technology and teaching program laboratories.

School facilities which are not safe, clean, attractive, clement, healthful, efficient, and func-



tional, create distractions which inhibit the learning process from a variety of perspectives. Consequently, steps need to be taken to remove such inhibitors in order to provide a milieu in which the student is free to concentrate on learning and developmental tasks and the teacher has at hand an appropriately designed and furnished space and the needed resources which will contribute most effectively to the learning process.

It is firmly believed that the above relationship is valid. Therefore, it becomes imperative that the Board obtain sufficient facilities funds to not only provide for deferred maintenance but also to initiate a comprehensive program for general renovations, associated program improvements, and modernization of its facilities.

In addition, staff reductions have impacted the Groundskeeping Division and the Building Maintenance and Repairs Division. Staff must be restored to ensure the consistent, continuous services required to maintain upgraded facilities and grounds.

#### 8. *Evaluation and Assessment*

Key to the improvement of the quality of education is the effective use of the products of evaluation and research. The City Board's Division of Evaluation will play a greater support role in this effort. The products of this unit will provide guidance for the long-range planning efforts of the district, the management of curriculum and instruction, the planning and provision of appropriate staff development opportunities for all staff and the continued targeting of the school district's efforts on the achievement of its educational objectives.

The implementation of the effective schools model carries with it many new assessment requirements. School staffs must assess their individual schools relative to the characteristics of effective schools. Instruments will be needed for teachers, administrators, parents and students to assess school climate. Effective schools monitor student progress frequently so that staff can be constantly aware of learning progress in relation to instructional goals and can adjust teaching efforts efficiently. All of these requirements indicate a greater reliance on the expanded use of the products of evaluation and research.

This is not to say that evaluation would concern itself simply with outcomes. Process evaluation is essential to any form of continuous corrective feedback. Working hand-in-hand with all components of the Plan, especially with Long-Range Planning, evaluation would assess such matters as the effectiveness of the management and logistics of the Plan and whether services have been reasonably planned and delivered. Only then can the human and material resources of the school district be targeted consistently upon the provision of quality educational experiences for the children and youth of the community.

#### *Special Provisions for Non-Integrated Schools*

In addition to the measures for the improvement of instruction throughout the school system from which the quality of education in integrated, non-integrated and magnet schools will be greatly enhanced, additional provisions will be made to upgrade the quality of education in non-integrated schools. Such provisions range from the establishment of pupil-teacher ratios which are lower than the reduced pupil-teacher ratios for other schools to the establishment of non-integrated schools of special

emphasis. These provisions may be categorized as instructional or motivational in nature and are described briefly as follows:

1. *Instructional Programs*

a. *Lower Pupil to Classroom Teacher Ratios*

Subsequent to 1983-84, the City Board proposes to reduce pupil-teacher ratios in non-integrated schools to an interim goal of five students below the proposed system-wide ratios for 1983-84 and to a ratio of 20:1 within five years. This ratio is estimated to be five students below the average for county districts and the proposed ratio for regular integrated schools and magnet schools.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

b. *After-School, Saturday and Summer School Experiences*

Remedial instruction and appropriate learning enrichment opportunities will be provided. Such remedial programs will provide more "time on task" in the development of cognitive skills. Enrichment experiences will be linked to courses of study and will promote the full understanding of subject matter and its various applications in the broader community which cannot be acquired in a class-

room setting alone. These experiences will be designed as extensions of classroom activities rather than replications of them.

c. *Parental Involvement*

Parent and staff seminars will be instituted to promote a mutual understanding of the school's mission and parental expectations of the school. Additionally, opportunities will be provided for parents to become tutors of their kindergarten and primary grade children. The involvement of parents as partners in support of learning is an important characteristic of effective schools. Such involvement is incorporated into the effective schools model.

d. *Schools of Special Emphasis*

Resources will be provided for non-integrated schools to develop programs of special academic emphasis for individual schools. Many black students, for one reason or another, will not be able to enroll in a magnet school or transfer to the County but still wish to receive alternative educational programs. Schools of special emphasis would be designed to meet those needs and interests.

2. *Motivational Programs*

a. *Motivational Recognition Experiences*

The motivational recognition experiences programs will provide a number of activities which will make available to pupils opportunities for success and recognition. Such activities as writing contests, debates, math competitions, science expositions and others will have motivational effects on students as well as

provide numerous opportunities for them to receive recognition for both participation and achievement. These activities would be scheduled throughout the year, and would be coordinated with the curriculum in order to ensure that pupils receive maximum benefits from participation. Activities would be scheduled for pupils in grades kindergarten through grade 12.

b. *Role Model Experiences*

Students in non-integrated schools will be provided with successful role models to encourage them to continue in their academic careers. Assembly programs and other large group activities, and classroom experiences with local, state and national figures will be arranged. These experiences will be coordinated with curricular materials in such a manner as to support the regular instructional program. Actual contacts with successful role models will encourage academic achievement, particularly in social studies and other areas which address current events.

c. *Shared Experiences Program*

Provisions will be made for the establishment of student concerns committees in each elementary and middle school. The committees of student representatives will meet regularly with the principal and will address such issues as student morale, attendance and behavior. Members will participate with staff in efforts to create a school climate which is conducive to the maintenance of an effective learning program.

## V *Part-Time Educational Programs*

A. *Part-Time Ancillary Programs.* Many of the part-time ancillary programs are presently in operation in the St. Louis public schools and may be expanded to include participating districts.

Among those programs presently in operation which may be expanded are the following:

- Pairing and Sharing
- The Law and Education Project
- Springboard to Learning
- Career Education
- The School Partnership Program
- Ethnic Heritage
- Radio Station KSLH

Another program which may be expanded for the benefit of both city and county students is the English as a Second Language (ESL) program. This program is presently operational in three schools that have been designated as ESL Centers. Students must be enrolled in the school and show need of ESL services before they can participate.

Additionally, cultural/educational institutions with long-standing and enviable records for their educational programs for school children as well as the adult community have made commitments to participate cooperatively in programs specifically designed to bring together students from city and county schools. They have well-trained staffs and well-equipped facilities for extending learning experiences beyond conventional classrooms to the broader environment of the community and the world at large, some of the institutions involved are:

- KETC-TV
- McDonnell Planetarium
- Missouri Botanical Garden
- Missouri Historical Society



Museum of Science and Natural History  
 Saint Louis Art Museum  
 Saint Louis Symphony  
 Saint Louis Zoo  
 United Nations Association  
 Urban League Library

The voluntary integration programs to be offered by these institutions will be a cooperative effort between each institution and the participating schools. As a first step, the institutions will establish certain general guidelines for their respective programs and extend the opportunity for participation to schools in the city and county. Faculty members and administrators will recommend students for participation in the programs.

While the format and scope of the programs will vary from institution to institution, each will have a common denominator: To bring together racially mixed groups of students from the metropolitan area districts periodically for programs of unique educational value.

Additionally, it is envisioned that cable television could become an integral part of the metropolitan voluntary plan.

*B. Part-Time Specialty Programs.* Students enrolled in part-time specialty programs shall attend classes a half-day for a complete semester or a full year. These programs include, but are not limited to:

Honors Art  
 Honors Music  
 Transportation  
 Mass Media

A student may participate by enrolling in that high school or by spending one-half day in his/her home school and the other half in the high school of the specialty. Honors Art and Honors Music shall be in a school setting which houses only these programs. For these last two

programs, students must spend one-half day in their home school and the other half day in Honors Art or Honors Music Programs. All specialty programs are at the secondary level.

### *C. Policies and Procedures*

1. Pupils must apply for admission into part-time specialty programs and will be admitted on a first-come, first-served basis with consideration being given to racial balance.

2. Part-time ancillary program experiences will be cooperatively planned and implemented by staff at the participating schools and institutional staff where appropriate with due consideration being given to racial balance.

## *VI. Faculty*

### *A. Definition of Teacher and Administrator*

1. As used herein, the term "school district" shall apply to each and every school district which is a signatory to this agreement.

2. As used herein, the term "teacher" shall include all certificated staff except certificated administrators. The term "administrator" as used herein, shall include all administrators, whether certificated or not.

### *B. Purposes*

1. Recruitment and selection of newly hired employees and the terms and conditions of employment shall be maintained and conducted in a manner which does not discriminate against black people because of their race.

2. To increase the number of black applicants who satisfy the school district's standards for employment.

3. To implement a system for monitoring and recording school district efforts to secure black applicants for teachers and administrators.

4. To seek to achieve a goal in its staff of teachers a work force of at least 15.8% black.

5. To seek to achieve a goal in its staff of administrators a work force of at least 13.4% black.

#### *C. Recruitment of Teachers and Administrators*

The school district shall be reasonable for recruiting black applicants for employment as teachers and administrators using any reasonable means available to it. The school district shall keep records to show how this section has been implemented and to report in the annual report specified herein in Section F herein the steps taken pursuant to this section.

#### *D. Application and Selection Procedures*

1. The school district shall initiate and maintain a record system sufficient to identify for each applicant, his or her identity, race, position(s) applied for, position(s) considered for, disposition, the source of the applicant's knowledge of the job opening, the date the application was received and any other information required to satisfy the provisions of Section F hereof.

2. The school district will retain an affirmative action file on all black applicants.

3. Whenever the school district has a vacancy, the Affirmative Action file shall be reviewed to identify qualified black candidates for consideration for such vacancy.

#### *E. Annual Hiring Goals*

Subject to the provisions of paragraphs 1 and 2 hereof, the following hiring goals for the employment of new

teachers and administrators, to be judged on an annual basis, shall be applied:

<u>Number of New Hires</u>	<u>Ratio — New Hires</u>
1 through 9	1 black: 2 white (33 1/3%)
10 through 20	1 black: 3 white (25%)
21 through 50	1 black: 4 white (20%)
51 or more	1 black: 5 white (16.6%)

For example, if in any year a district hired 17 teachers and/or administrators, the first 9 hires would be 3 black and 6 white and the next 8 hires would be 2 black and 6 white.

Each school district shall report to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel the number and percentage of teachers and administrators as of the effective date of this agreement, such report to be filed thirty days after such date.

1. Nothing contained in this agreement shall be construed to require the employment of unqualified teachers or the discharge or replacement of any teachers employed by a school district.

2. School districts shall be obliged to use their best effort to attain the goal and above stated annual hiring goals. Failure to attain the goal or annual hiring goal may be justified, among other reasons, if a district demonstrates that such failure was because it hired the best qualified candidate for each position.

#### *F. Reporting and Enforcement*

Commencing October 1, 1983 and annually thereafter, each school district shall file a report covering teachers and administrators with the Voluntary Interdistrict Coordinating Council and each of the plaintiffs' counsel herein, containing total number of new hires, total white

new hires, total black new hires, positions filed with new hires, rate of pay and total applications received in that year broken down between white and black applicants. The first such report shall contain such information for the period from the date of this agreement to September 15, 1983 and each subsequent annual report shall cover the period from September 16, to the following September 15.

If a district's annual hiring goal is not met and upon request of plaintiffs or their counsel each school district upon receiving such request shall provide within a reasonable time the following additional information, which shall not include the name of any person hired or of any applicant for employment:

1. Positions filled during the reporting period showing race, date of hire, position hired into, rate of pay, and reason for selection;

2. All applicants for positions filled during the reporting period showing race, date of application, position applied for and position considered for, reason for the rejection of other applicants for the position filled and date decision was made. If a district's annual hiring goal is not met and if plaintiff's counsel desires additional information to that previously provided pursuant to the terms hereof, plaintiff's counsel shall have reasonable access to these documents upon request to the school district's counsel and upon mutually agreeable terms.

The school district shall retain all applications, correspondence, applicant logs, interview sheets and all other documents relating to any application for employment and the basis for selection or rejection of any applicant, including the name and address of each individual applicant and/or person employed.

The provisions of this settlement agreement relating to the recruitment and employment of black teachers and

administrators are subject to judicial enforcement; provided, however, except for good cause asserted, counsel for the movant, prior to seeking judicial enforcement, shall first confer with the school district's counsel or make reasonable efforts to do so, in an attempt to resolve any differences.

Nothing contained herein shall preclude any individual who believes he/she has been discriminated against because of race from asserting such claim in an appropriate forum whether or not this agreement's hiring or pupil goal has been met.

G.

All obligations pursuant to this agreement relating to hiring of black teachers and administrators, including the reporting requirements in Section F hereof, shall terminate at the time the hiring goals of 15.8% black teachers and 13.4% black administrators is reached, or the pupil goal of 25% black students is reached, whichever occurs earlier. The meeting of such goal or goals shall be documented by data reported to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel.

H. *Duty to Follow State Law*

Nothing herein shall require a district to violate any provisions of Missouri law and, in particular, the Missouri Teacher Tenure Act, as amended, applicable to both six director and Metropolitan school districts; provided however, in filling vacant teacher positions, districts shall use to the extent required and at their request, desegregation funds as may be ordered by the Court and received by the districts because of their participation in this settlement agreement to fill such vacant positions through new hires of blacks to meet the annual goal set forth in Paragraph E.



#### 4. I. *Teacher Transfers and Exchanges*

Voluntary interdistrict transfers of teachers will also be used to attain affirmative action goals when such transfer results in movement toward a district's annual affirmative action goal.

Voluntary teacher exchanges will be encouraged to enhance desegregation efforts.

##### a. Purpose

The purpose of the teacher transfer and exchange program among metropolitan and county school districts is to enhance racial teacher balance and teacher integration experiences in the districts. Another purpose of this program is to foster attitudes of responsiveness, cooperation, and innovation in meeting educational challenges.

##### b. Conditions

i. The exchange teacher shall remain an employee of the home district and will receive from the home district the scheduled salary and fringe benefits to which he/she is entitled as an employee of that district. Existing liability insurance agreements of districts shall be appropriately amended prior to any exchange or transfer to provide continued coverage for the exchange or transfer teacher.

ii. Any teacher who volunteers has the right to maintain affiliation with professional associations of his/her choice.

iii. Teacher tenure status shall not be affected by the special assignment to another school district.

iv. Personnel policies normally provided to teachers in the receiving district shall be given to exchange or transfer teachers.

v. The teacher shall receive from the host district mileage reimbursement for job related functions that others in similar positions receive. No mileage reimbursement shall be provided for travel to and from the worksite and the teacher's home.

vi. The school calendar of the host district shall be totally followed by the exchange or transfer teacher. The effective date of assignments beginning in the fall shall be determined by each district's calendar. When the beginning dates of the districts' second semesters do not coincide, the effective date of the exchange shall be the latter of the two for both exchange teachers. The effective date of administrative changes shall be agreed upon by the participating districts.

vii. Selection procedures may provide for visitations and interviews prior to acceptance by any of the parties involved.

viii. The exchange or transfer teacher's period of assignment shall be mutually agreed upon by the home and host districts. The exchange teacher is expected to serve full term of the exchange or transfer agreement. Should a request for transfer be submitted by the exchange or transfer teacher before the end of the agreed-upon term, the request shall be reviewed and action agreed upon by the home and host districts prior to any final determination.

ix. In the event of an exchange teacher's absence, the host district shall provide the substitute teacher, and the home district shall pay the costs of a substitute teacher as billed at

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the scheduled rate of the host district for the balance of the period of the exchange.

x. Supplemental assignments of exchange teachers are permissible and may be made by either district during the exchange period. Extra-duty pay for all services performed in the host district shall be forwarded to the home district for deposit. The home district shall assume responsibility for making necessary employee deductions before issuing a check for the extra-duty assignment.

xi. The teacher exchanges and transfers shall be limited to full-time, tenured staff, except by mutual agreement of the individual districts involved.

xii. The evaluation of exchange and transfer teachers shall be as mutually agreed to by the home and host school districts.

xiii. The exchange or transfer teacher shall be expected to return to the home district at the end of the exchange or transfer assignment period.

xiv. When the exchange or transfer teacher returns to the home district, assignments will be based upon the home district's policies and procedures.

xv. An exchange or transfer teacher shall receive on a one time basis only a monetary bonus for the completion of one full school year of service under this section, such sum as may be agreed upon by the host and home districts.

xvi. The host district shall pay the transfer teacher's remuneration, including the cost of a substitute teacher's salary.

xvii. All transfers and exchanges shall be subject to the approval of both the home and host districts.

### VII *Parent Involvement*

- A. Each participating district shall encourage the parents or guardians of students transferring into or out of their district to participate in the educational process and shall not be restricted from or denied access to activities and processes provided to resident parents. In this regard, additional steps may be initiated by the district to foster this positive relationship. Among the areas which may require special attention by the districts are the following:
1. Parents may need an opportunity before the student transfers to visit the host school and meet the staff, particularly the student's teacher(s), in a supportive milieu that encourages further interest and participation.
  2. Parents should be encouraged to participate actively in the parent organizations of the host school and district.
  3. If transportation presents a problem for the parent, assistance might be arranged through carpools or other means as the district may decide.
  4. Opportunities for evening conferences between teachers and parents could be provided.
  5. Parents need to be informed about academic policies and discipline code procedures before the student completes the transfer process.
- B. A parent advisory council under VICC with representation from all participating districts, which includes parents of resident and transfer students, may be constituted on an annual basis. This council

shall provide assistance to the Voluntary Interdistrict Coordinating Council in addressing parent and student concerns about the interdistrict voluntary plan.

### VIII. *Transportation*

1. The Missouri State Department of Elementary and Secondary Education shall:

a. Provide transportation for interdistrict transfer students enrolled and participating in regular or magnet programs who reside more than one mile from the school site;

b. Provide transportation for students enrolled and participating in part-time ancillary programs and half-time specialty programs.

2. Any district may request to manage the transportation of their voluntary transfer students or voluntary transfer students attending other districts; and if such a request is made, the State shall approve the same if it is cost effective and can be assimilated into the state operated transportation program.

### IX. *Administration*

A. *Establishment and Purpose of Voluntary Interdistrict Coordinating Council.*

1. A Voluntary Interdistrict Coordinating Council ("VICC") shall be established as provided herein.

2. The purpose of the VICC is to coordinate and administer the student transfer and voluntary teacher exchange provisions of the settlement agreement. The VICC shall have no authority or responsibility for the operation of the school districts which are parties to this agreement, and it is hereby expressly understood and agreed that all such authority and responsibility remains

with the duly elected board of education for each school district, as provided by law. The VICC shall have no power to alter or amend the terms and provisions of the settlement agreement. The VICC shall have no powers beyond those expressly granted to it herein, or as may be granted to it by any amendment to the settlement agreement duly authorized by the unanimous consent of the parties and with approval of the Court.

B. *Membership*

1. The VICC shall have the following voting members:
  - a. One person selected by each school district which is a party to this agreement;
  - b. One person each selected by the National Association for the Advancement of Colored People ("NAACP") and by the Liddell plaintiff group as parties to this agreement; and
  - c. One person employed by the State Department of Elementary and Secondary Education, or its successor, selected by the Commissioner of Education, or his successor.
2. The VICC may, in its discretion, invite teacher, parent and other interested organizations to select representatives to participate in the activities of the VICC as non-voting members.
3. Each appointing authority shall also select an alternate representative to the VICC. The alternate shall have the same power and authority as regular members in the absence of the regular member.
4. Each regular and alternate member shall serve for a term of one year. Each appointing au-



thority shall name its initial representatives to the VICC within ten days after approval of this agreement by the Court.

C. *Voting*

Each person appointed pursuant to paragraph IX.B.1. shall be entitled to one vote on each matter submitted to a vote of the VICC. On all questions a majority of the VICC voting shall decide the issue. Alternate members shall have the right to vote in the absence of the regular member.

D. *Quorum*

A quorum shall consist of a majority of the voting members. Official business of the VICC shall be conducted in the presence of a quorum and not otherwise.

E. *Meetings*

1. The VICC shall determine the time, place and date of its meetings, and members are to be considered informed thereof by the action taken by it in making such determinations. Notice of meetings may be confirmed by the Executive Director. In addition, the Chairman, the Vice-Chairman in the Chairman's absence or a majority of the voting members may call special meetings upon appropriate notice to members of the time, place and purpose of the special meeting. The special meetings shall be limited to the purpose stated in the notice unless otherwise agreed by the members.
2. The VICC shall follow and be governed by the provisions of Chapter 610 RSMo. 1982 Supp, as it may be amended or revised from time to time, with respect to its meetings, votes and records.

## F. *Officers*

1. The VICC shall elect a Chairman, Vice-Chairman and Secretary from its voting members to serve for a period of one year. No person shall be precluded from holding office because he previously held such office. These positions should rotate among the voting members and parties to this agreement. The position of Chairman shall be held by the City Board representative at least once during the first five years.
2. The Chairman shall have general supervision of the proceedings of the VICC. The Chairman, or in his/her absence, the Vice-Chairman, shall preside at all meetings of the VICC. The Chairman and Vice-Chairman may perform other duties as may be prescribed by the VICC.
3. The Secretary shall keep, or supervise the keeping of, the minutes of the VICC meetings; be responsible for the giving of all appropriate notices; and act as the official custodian of the records of the VICC.

## G. *Staff*

1. a. The VICC shall select an Executive Director who shall report directly to the VICC.
- b. The Executive Director shall be responsible for the daily supervision and operation of the overall administrative duties of the VICC.
- c. The Executive Director shall, with the approval of the VICC, employ such full-time and part-time staff as may be necessary to carry out the duties of the VICC.
- d. The Executive Director shall appoint, with the consent of the VICC, a Recording Secretary to take and transcribe the minutes of

VICC meetings. The Recording Secretary shall serve upon terms to be determined by the VICC.

- e. The Executive Director shall be an *ex officio* member of the VICC without vote.
2. The VICC shall select a Director of Student Recruitment and Counseling. The Director of Student Recruitment and Counseling shall have primary responsibility for the daily supervision and operation of the Student Recruitment and Counseling Center established herein and shall report to the VICC through the Executive Director.

#### H. *Fiscal Authority*

1. The VICC may authorize the Chairman, Vice-Chairman or Executive Director to enter into any contract or execute any instrument in the name of the VICC. Such authority may be general or confined to specific documents. All contracts, instruments, or other obligations shall be in writing, and shall be presented to the VICC for approval before being executed. Nothing herein shall be construed so as to impose any personal liability upon the members of the VICC for any such contracts, instruments or obligations.
2. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the VICC shall be signed by the Executive Director and countersigned by the Chairman. In the absence of the Chairman, either the Vice-Chairman or the Secretary may countersign such instruments. At least once each month, the Executive Director shall present to the VICC the vouchers payable for its review and approval. The Executive Director may establish

a petty cash fund from which disbursements may be made by the Executive Director pursuant to guidelines approved by the VICC. The Executive Director's authority is limited to budgeted amounts for expenditures as approved by the VICC.

3. All funds of the VICC shall be deposited to its credit in such banks, trust companies or other depositories as the VICC may select.
4. The VICC may, in its discretion, contract with any school district which is a party to this agreement to act as the VICC fiscal agent, or to provide other fiscal services as may be approved by the VICC.
5. The VICC fiscal year shall be from July 1 to June 30 annually.

#### I. *Rules, Operating Procedures and Forms*

The VICC shall adopt such reasonable rules, operating procedures and forms as it may deem necessary or appropriate to fulfill its functions under the settlement agreement, and as may be consistent with the terms of the settlement agreement. All such rules, operating procedures and forms may be modified, from time to time, consistent with the settlement agreement.

#### J. *Powers*

1. The VICC and its staff, in cooperation with the parties to this agreement, shall develop procedures to implement the student transfer and teacher exchange provisions of this agreement. The procedures shall be developed in a manner consistent with the principles as set forth in this agreement. The procedures shall be adopted by VICC as soon as practicable, but in no event

later than forty-five days after approval of this agreement by the Court.

2. The VICC shall have the following responsibilities:
  - a. To develop procedures for implementation of the student transfer and teacher exchange provisions of the settlement agreement;
  - b. To supervise recruitment, counseling and placement of student transfer and teacher exchanges;
  - c. To coordinate dissemination of information on available programs to the community;
  - d. To assist in developing and implementing an effective and safe transportation system for student transfers, including assistance in setting standards for such implementation;
  - e. To coordinate interdistrict safety and security services where necessary;
  - f. To prepare an annual budget for its operations for approval by the parties and the Court;
  - g. To assist in planning and implementing new magnet schools and magnet programs; and
  - h. To report at least annually to the parties and the Court the steps taken to implement the settlement agreement. This report shall include information including but not limited to: student transfers; teacher exchanges; recruitment counseling and initial placement efforts; student placement and modifications and suspension and expulsion relating to transfer students. The Committee shall provide for:

1. the collection of data providing evidence of compliance and assurance of non-discriminatory treatment, which may include such areas as promotion/retention, extra-curricular activities, evaluation and placement.
2. evaluation of implementation process and identification of problem areas to be targeted for special intervention or additional resources. This may include school level data on requests for special education evaluations, disciplinary actions, rates of absence, withdrawal or drop-out.
  - i. To coordinate the development and dissemination of information about the schools and programs available in each of the school districts which are parties to this settlement agreement;
  - j. To keep accurate records of all teacher exchanges and status of such exchanges;
  - k. To receive and address concerns of voluntary exchange teachers relating to their participation in desegregation activities;
  - l. To assist in staff development and in-service training activities in order to prepare staff to function in integrated settings;
  - m. To perform such other activities as are necessary and consistent with this agreement.

K. *Student Recruitment and Counseling Center*

1. There shall be established a Student Recruitment and Counseling Center to have responsibility for all recruitment and counseling activities with respect to the student transfers under this settlement agreement. With the approval of the Court,



the Student Recruitment and Counseling Center established herein shall include the existing office of the Recruitment and Counseling Center in the City of St. Louis established pursuant to the terms of the St. Louis Public Schools Intradistrict Desegregation Plan. Nothing herein shall affect the operation of the existing Recruitment and Counseling Center in the City of St. Louis with respect to the Intradistrict Desegregation Plan, and all duties and responsibilities imposed herein shall be deemed additional to those presently performed by that Center. A parallel office of the Student Recruitment and Counseling Center shall be established in St. Louis County by the VICC.

2. The VICC may establish additional and/or satellite offices in the City of St. Louis and St. Louis County as may be necessary and appropriate. All existing satellite offices in the City of St. Louis will continue to operate according to the terms of the Intradistrict Desegregation Plan.
3. The Recruitment and Counseling Center shall with the approval of the VICC hire an adequate staff to perform its duties and responsibilities herein.
4. The Student Recruitment and Counseling Center shall have the following responsibilities:
  - a. To process all applications for student transfers in accordance with the principles established by this settlement agreement;
  - b. To conduct and coordinate recruitment drives with the school districts which are parties to this settlement agreement;
  - c. To conduct and coordinate advertising campaigns relating to the student transfer provisions of this settlement agreement;

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- d. To coordinate the development and dissemination of information about the schools and programs available in each of school districts which are parties to this settlement agreement;
  - e. To keep accurate records of all student transfers and the status of such transfers;
  - f. To collect and analyze student data for the VICC annual reports to the parties and the Court required by Section IX.J.2.h.; and
  - g. To perform such other activities as the VICC may deem appropriate and consistent with the terms of this settlement agreement.
5. The Student Recruitment and Counseling Center shall process all student transfers to part-time specialty programs or full-time programs. It shall not process students participating in part-time educational programs.

L. *Part-Time Educational Programs*

The VICC will coordinate the modification, addition or deletion of any such programs in the future.

M. *Transition*

1. With approval of the Court, the Coordinating Committee established pursuant to Order H (226) 81, dated July 2, 1981, shall cease to exist upon the effective date of this settlement agreement.
2. Subject to approval by the VICC, all records, funds, property and personnel of the Coordinating Committee shall be transferred to the VICC on the effective date of this settlement agreement.
3. The VICC and the Coordinating Committee shall cooperate to effect an orderly transition.

4. The effective date of this settlement agreement shall be ten (10) days after the approval of this agreement by the United States District Court for the Eastern District of Missouri.

N. *Resolution of Procedural Disputes in the Administration of the Settlement Agreement*

1. It is expected that most issues which are the responsibility of the VICC will be resolved by a majority vote of a quorum of the VICC.
2. If an issue cannot be resolved by the VICC or a member disagrees with a decision of the VICC, the following steps will apply:
  - a. The Chairman will appoint a sub-committee of the VICC to study the issue and report back to the VICC with appropriate recommendations. This sub-committee should consist of three to seven members who represent a fair sample of persons who have a special interest in the issue.
  - b. The VICC will then reconsider the issue and vote upon it.
  - c. Should this review process not satisfy the parties involved, the issue will then be referred to a mediating panel of three persons. Each party to the dispute will select a member-at-large, and the third member shall be selected by the first two. The decision of this panel will settle the issue on the VICC level.
  - d. Direct appeal to the Court will be the final procedure in such matters for all parties.
3. This Section is limited to procedural disputes which may arise in the administration of this settlement agreement. Nothing contained herein shall limit the parties from its rights under Section XII.

O. *Resolution of Individual Disputes and Grievances of Transfer Students*

The Recruitment and Counseling Center shall provide information and counseling to parents of transfer students and to transfer students who have questions and/or grievances concerning their treatment as transfer students. In any such grievance or dispute other than involving a suspension of more than 10 days or expulsion, if after assistance and counseling have been made available and the applicable procedures of the host district have been completed, the grievance or dispute has not been resolved, the matter shall be referred to the VICC for mediation. VICC will secure the appointment of a mediating panel to conduct non-binding arbitration. Each party to the dispute will select a mediator and the third member will be selected by the first two.

If the dispute still is not resolved, the parties to the dispute may pursue such other legal remedies as are available including judicial enforcement of this settlement agreement, if appropriate.

Where a long-term suspension or expulsion is involved, a transfer student shall have the same rights as a resident student.

X. *Finance*

A. The fulfillment of the obligations of the parties is contingent upon an Order by the Court which establishes adequate funding for the obligations of the parties, consistent with the Agreement in Principle and this Settlement Agreement.

B. The payments for funding under this Agreement shall be as follows:

1. Each year each district shall calculate and certify separately its cost per pupil in a regular school

and in a magnet school. The cost per pupil shall be all costs for instruction and support services as reported in the Annual Secretary of the Board Report (FD-5) minus all pupil transportation and food service costs. The State shall pay these costs for full-time equivalent transfer pupils to the districts membership. The State shall pay separately to the host district the then current cost per pupil less the amount of State aid and trust fund allocation per pupil. However, each host district shall report each transfer pupil as a resident pupil for the purposes of determining all forms of State aid and as part of each host district's eligible pupil count for the purpose of determining trust fund allocations.

Each host district shall estimate the full-time equivalent of transfer pupils to the district's membership and transmit such estimate to the State in September of each year. A correction will be made in January of each year and a final adjustment made in June. Payments shall be made by the State through forward funding paid monthly to each district based upon the September estimate as corrected.

2. No later than 30 days after the entry of the funding order, each school district participating in the Agreement shall irrevocably elect and notify the State of its election of one of the following options:
  - a. Each home district shall receive from the State for each student who voluntarily transfers from his or her district to a host district under this agreement one-half of the State aid it would have received had the student remained in his/her home district. This State payment shall be made for each district for

a period of five years or any extension of time agreed to by the parties subsequent to the Court's approval of this agreement.

- b. Beginning with the 1984-85 school year each district which sends more transfer pupils than it receives under this agreement and which thereby experiences a decline in its actual enrollment shall report its second preceding school year's actual enrollment for purposes of determining State aid and as part of each such district's eligible pupil count for purposes of determining trust fund allocations.
3. The cost of the incentives for provisions for voluntary teacher exchanges under Section VI (Faculty), the cost of student recruitment, start-up costs and building modification costs of new magnet schools and expanded magnet costs to schools programs, one-time extraordinary costs (other than hiring of personnel) such as the costs associated with reopening a closed school, the costs of community involvement centers and part-time educational programs, transportation of transferring pupils, the operating expense of the VICC, its staff and the Recruitment and Counseling Center and each of its offices, the costs relating to the improvements in educational programs offered by the City Board in Section IV (Quality Education) and such other costs incurred pursuant to this Settlement Agreement shall be paid by such combination of additional State funding pursuant to Court of Appeals for the Eighth Circuit's decision in *Liddell et al v Board of Education et al.*, 677 F.2d 626, 641-642 (8th Cir. 1982), *cert. denied*, 51 U.S.L.W. 3258 (Oct. 5, 1982) (No. 81-2022) and a tax rate increase in the City of St. Louis as shall be ordered by the Court. These payments shall be in addition to



the payments set forth in paragraphs a and b above.

4. If any school district obtains desegregation assistance from an outside source, the amount of such funding shall be deducted from the State's funding requirements under this Settlement Agreement. In calculating State payments under subsection a hereof, the State shall determine how much money would have been paid in State aid to the home districts from the State Foundation Funds had the transfer pupils remained in their home districts. That sum shall be applied to the costs of this plan for the purposes set forth in paragraphs 1 and 2 hereof and shall continue to be charged to the Foundation Funds. However, all other costs and payments required under this plan shall not be funded from the Foundation Funds. The State shall not decrease its level of funding for education below the amount of funding established for the 1982-83 fiscal year. Pupils who are accepted in a host district shall not be required to pay any fee to the host district as an out-of-the district pupil.
5. Each district shall prepare a budget setting forth the estimated costs which it will incur as a result of this Settlement Agreement and present said budget to the Court for approval and appropriate funding orders at a date to be determined by the Court.

#### *XI. Other Provisions*

A. The City Board shall be invited to join the Cooperating School Districts for the St. Louis Suburban Area, Inc.

B. The Liddell, Caldwell and City Board Plaintiffs are entitled to "reasonable" attorneys' fees and costs of litigation to be paid exclusively by the State after a full hearing on attorneys' fees.

C. Participation in this settlement agreement by any school district shall not be deemed an admission of liability nor an element of proof of liability in any interdistrict school desegregation case.

D. The parties acknowledge that this settlement agreement may be inconsistent with the May 21, 1980 Order as amended and if so, the terms of the May 21, 1980 Order as amended shall be modified, with the approval of the Court, to be consistent with this settlement agreement.

E. Consistent with the Agreement in Principle, there shall be no court ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability as provided in Section XII; the 23 suburban school districts in St. Louis County will continue to exist as provided in Section XII; the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be provided by the Court as provided in Section X; and black students in suburban school districts that have a minority enrollment of 50% or greater enjoy transfer rights as provided in Sections II and III.

F. The parties recognize that some school districts view the neighborhood school concept as a desirable educational tool. Under this paragraph no district will be required to adopt or abandon a neighborhood school plan and its customary attendance areas. Districts presently operating under a plan established by court order or agreement with any federal agency which addresses the elimination of racially identifiable schools shall not be affected by this paragraph so long as the court order or agreement remains in effect or the district continues to follow the court order or plan.

1. Districts which have exceeded the plan goal (25% black) for the district, but have within the district individual schools with student ratios of more than 50% black shall permit the black stu-

dents attending those schools the same interdistrict transfer rights as are conferred upon black students attending majority black districts.

2. Districts which are at the plan goal (25% black) or below which have within the district schools with student ratios of more than 50% black shall extend to black students attending those schools the right to transfer intradistrict to another school whose black/white ratio does not exceed 25% black—75% white.

## XII. *Stay*

A. The litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims will be stayed for a period of 5 years to permit full implementation of the provisions of this settlement, including voluntary transfers, magnet schools, quality education, and affirmative action under terms set forth below.

B. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

C. In July of each year, beginning July 1, 1984, each of the school districts that is a party to this settlement agreement shall submit to the parties and to the VICC an annual report describing the racial composition of the faculty and student body in that district, and the steps taken to implement the settlement agreement. Any district which has not met its annual target may include in the report factual observations and conclusions addressed to that issue. In addition, each of the other parties to this agreement shall submit to the parties and to the VICC an annual report describing their activities under this agreement, according to the same schedule.

D. When a district reaches its plan ratio within five years or any extension of time mutually agreed to by the parties, it is entitled to a final judgment declaring that it has satisfied its interdistrict pupil desegregation

obligations. A district shall also be entitled to a final judgment if within five years it has enrolled 90% of the additional black students required to satisfy its plan ratio calculated pursuant to Section II.A.3. so long as the total number of additional black students attending schools in districts with plan ratios (all districts listed in Section II.A.2.b.) equals or exceeds the number of such black students who would have attended such schools had all such districts met such plan ratio. In making this latter calculation, resident students in excess of the plan goal shall not be included and interdistrict transfer students in excess of the plan goal shall be included.<sup>1</sup>

<sup>1</sup> Assume districts X, Y and Z each have a current enrollment of 100 students of whom none are black. If no black students move into these districts, each will have to accept 18 transfer students (18 is approximately 15% of 118). Assume, however, that in five years, while District X still has no residential black students, District Y has five residential black students (total enrollment 105), and District Z has 18 residential black students (total enrollment 118).

There are two ways for these districts to satisfy the plan ratio:

A. Each district must have accepted enough black transfers to bring its minority enrollment to 15%. Thus, District X must have accepted 18 black transfer students, District Y must have accepted 13 black transfer students and District Z need not accept any. In other words, the three districts together must have accepted 31 interdistrict transfer students.

B. Assume District X has accepted only 16 interdistrict transfer students (i.e. 90% of the plan ratio of 18). It will, nevertheless, have satisfied its obligation if, for example, District Y has accepted 15 students.

To illustrate:

Dist.	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	15	120
Z	100	18	0	118
		23	31	154[sic]

[Continued]

The plaintiffs shall not seek any further interdistrict pupil desegregation relief through litigation.

The school district's only continuing interdistrict obligations under the settlement agreement that are judicially enforceable are to cooperate in the recruitment and promotion of transfers under Sections 4a, c, f and h of the agreement in principle as implemented by Sections II and IX hereof, to accept transfer students under Section 1 of the agreement in principle as implemented by Section II hereof, and to participate in the magnet program established under Section 2 of the agreement in principle as implemented by Section III hereof in order to reach and maintain the plan goal (25 percent). The Court will relinquish active supervision two years after the five-year period.

E. If a school district does not meet within five years its plan ratio or the numerical requirements as set forth in paragraph D above, then

1. Following completion of the monitoring and negotiation process described in paragraphs F and G below, plaintiffs may renew the litigation involving paragraph 12(c) and their pending interdistrict claims as to any such school district.

2. In such litigation, plaintiffs must establish liability and they shall not seek school district consolidation, dis-

<sup>1</sup> [Continued]

In the alternative, District X will have satisfied its obligations if District Y accepts 13 transfer students and District Z accepts two students.

To illustrate:

Dist.	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	13	120
Z	100	18	2	118
		23	31	154[sic]

solution or reorganization and they further shall not seek a remedy beyond the plan goal (25 percent).

3. Any remedy shall distribute the burdens of desegregation equitably between the minority and the non-minority students in the school districts involved in the litigation under this paragraph.

4. In devising any remedy the Court will consider the monitor's report. The monitor's report shall not be conclusively binding but shall be entitled to weight.

#### F. *The Monitor*

1. By October 1, 1987, the plaintiffs and the school districts that have not yet satisfied the numerical requirements of paragraph D or the district's plan ratio above will meet and attempt to agree on the selection of a monitor. If they are unable to do so, each side will select its own monitor and the two monitors will then select a third. The third monitor shall be a person who has not been involved in any aspect of this litigation and has not taken a public position on any aspect of the case.

2. The Monitor shall make an investigation and positive recommendation. The Monitor shall by January 31, 1988 conduct an informal fact finding hearing at which all interested persons shall have an opportunity to be heard.

3. By April 1, 1988 the Monitor shall file a final report. The Monitor's review shall be limited to:

- A. Determine the steps taken by the district to meet its plan ratio;
- B. Investigate what further steps can be taken to assist the district to meet its plan ratio;
- C. Make recommendations as to steps to be taken by the parties to assist the district in meeting its plan ratio and the time period which the



Monitor believes is necessary for the district to reach its plan ratio. These recommendations shall be consistent with the obligations of the parties contained in Sections II and III of this agreement.

4. The Monitor shall file his report with the Court. If the district and the plaintiffs agree to follow the recommendations of the Monitor, then those recommendations shall be put in place and the stay extended for the period of time contained in the recommendations.

5. If the district or any plaintiff does not accept the recommendations of the Monitor, the plaintiffs or any of them may proceed to renew the litigation.

6. If plaintiffs fail to renew the litigation within a period of two years from the date of the filing of the Monitor's report, they shall be barred from renewing the litigation unless an extension is mutually agreed to by the district and the plaintiffs.

#### *G. Negotiations*

Following the issuance of the monitor(s)' report on April 1, 1988, the parties may meet and attempt to agree upon a course of action for each district which course of action may be at variance with the Monitor's recommendations.

## APPENDIX E

BUDGET PROPOSED BY THE  
CITY BOARD PURSUANT TO THE  
SETTLEMENT AGREEMENT WITH  
INTRODUCTION AND NARRATIVE

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INTRODUCTION

Consistent with the terms of the Agreement in Principle, City school administrators responsible for instructional or support functions were asked to assess needs in their areas of responsibility and to propose measures which would improve the quality of education systemwide or the quality of education specifically in non-integrated schools. Some 60 administrators, and, in some instances teachers and members of community organizations, submitted approximately 121 proposals for the improvement of educational quality.

All proposals were subjected to analysis and several reviews by the administration. Some 49 proposals were eliminated from further consideration because they would have partially duplicated services provided in other components or their implementation would have been counterproductive. More than a dozen ideas were received from CQ, and further suggestions were received in a comprehensive report from Dr. Evelyn Luckey, Liddell expert. Opportunities were provided for input by the State and others represented on the County Superintendent's Committee on Magnet Schools and Quality Education. Additional suggestions were received from various sources and were incorporated where possible. Some components were further revised and the remaining components (55 for systemwide improvements and 17 for nonintegrated schools) were submitted as the Appendix to the Detailed Settlement Plan. The components con-

tained in the Appendix were intended to be indicative of the scope of the efforts necessary to significantly improve the quality of education in the City schools.

Additional needs assessment, analysis and reorganization of the Appendix were needed; however, because of the scope of the proposals, this could not be accomplished prior to the filing date.

Subsequent to the filing of the Appendix, review and analysis continued for the purpose of consolidating, where possible, and reorganizing the content to more clearly show the interrelationship of proposed efforts to improve educational quality. Components were reorganized into nine categories depending upon whether they addressed the improvement of instructional programs, the provision of learning media resources, the provision of adequate levels of staffing, the special needs or talents and interests of students, the use of community learning resources, instructional and other supportive services or facilities maintenance and improvements. During this process, some components were consolidated with other components, some new components were added and some were deleted.

For example, three components on law-related education and a career orientation program were combined with the curriculum development component as were components related to the improvement of instruction in science and mathematics, art and computer literacy programs.

Further analysis and review disclosed that the implementation of certain quality education components would require related support services to ensure success. In recognition of this need, a Curriculum Supervision component was added to ensure that newly developed curriculum will be used in an educationally sound and efficient manner. Provisions were also made for the improvement of school health services systemwide and

counseling services to elementary students as were provisions for additional insurance services such as those related to job injuries and the safety of school buildings. Anticipated increases in functions related to accounting, auditing and budgetary support resulted in additional provisions to address those needs.

Further analysis disclosed that some additional components were partially duplicative of others or were inappropriate and they were eliminated. The component, Improve Access to Media Resources for Instruction (A.1.04.01), was eliminated. In Section B, which contains proposals for non-integrated schools, the Leadership Skills Program (2.01.08) and Cultural Curriculum Enrichment (2.01.14) were eliminated because such services would be provided in proposed systemwide components. The City Board anticipates that its obligation to provide enrichment laboratories under the intracity plan will continue. Therefore, such mention as in 2.01.15, Retain Enrichment Labs, was eliminated. Facilities Needs in Non-Integrated Schools, 3.01, is adequately addressed in the systemwide components on facilities improvements and was, therefore, removed from Section B.

The component on Student Academy Centers, 2.01.07 was eliminated as a component but would be made available as an option for implementation as part of the Schools of Emphasis component, 2.04, if the staffs of non-integrated schools determine such need. Component 2.03.03, School Crossing Guards was eliminated. This service was recently terminated by the City and it was believed inappropriate to include such provisions in this document, even though such services are needed.

This document contains 50 components which would address the improvement of quality education on a systemwide basis and 12 components specifically designed for non-integrated schools. It must be noted that a number of the components in Section A relate to programs

that have been approved by the Court as part of the intracity desegregation plan, as specific provisions for non-integrated schools, or as components of the 12(a) plan. These programs are the College Preparatory Program, Student Leadership, English as a Second Language, Honors Art, Mass Media—Secondary, Springboard to Learning, Pairing and Sharing, and the School Partnership Program. These programs have generally proven their worth as programs of quality which also provide part-time integrated experiences to students. They would continue to serve these functions as components of desegregation plans. They are presented in this document as proposals within the context of some incremental expansion to increase the accessibility of these quality educational programs for additional students.

Two other programs are included which had been previously approved under the intracity plan and which were permitted to be discontinued by the Court at the request of the City Board. These are the Music Center (Honors Music) and the Science Enrichment Program in conjunction with St. Louis University. The City Board had reassessed its position on the termination of the Honors Music Program and had requested the approval of the Court for its reinstatement in H(2035)83. At the time of this request, plans for the resumption of the program had not been completed. The intervening developments with respect to the settlement plan and the analysis of need relative to the improvement of educational quality have resulted in the alternative proposal contained in this document. This proposal provides for the establishment of a Music Center which would be the first step in the careful development of a viable Honors Music Program.

The Science Enrichment Program was approved by the Court as a part of the intracity desegregation plan. The City Board reluctantly requested approval of the termination of the program for year 3 because Federal funds

which supported it were withdrawn. The Court approved its termination in H(1046)82. The Science Enrichment Program offers excellent support for the City Board's efforts to improve the quality of science education, and it is proposed that the program be reestablished.

The City Board closed Pruitt Alternative High School in year 3 with the approval of the Court. Students who had been assigned to Pruitt were to be served in the general high schools through the in-house suspension program or through reassignment to another general high school, if necessary. The in-house suspension program has generally served its purposes and would be continued. DMAC and CQ have noted a need for an alternative high school such as Pruitt. The alternative high school proposed by the City Board represents a "middle ground" approach to providing services to students whose needs cannot be met by the in-house suspension program and for whom appropriate services are not available in the general high schools.

Finally, the component entitled Expansion of the Educational Intervention Plan for More Effective Schools, 7.01, is an extension of the project SHAL concept which was recommended by the City Board and CQ and approved by the Court as a project for the non-integrated schools in Area I. It is proposed that this concept be expanded to include all schools.

In Section C, the City Board has outlined magnet school expansion plans and proposes that a Magnet School Curriculum Development Unit be established to support the systematic expansion of magnet school opportunities. Also proposed is the reestablishment of the Ethnic Heritage Program to serve students who would be attending magnet schools, many of whom would be in an integrated setting for the first time.



Thus, this document contains proposals for the efforts which the City Board believes necessary for the substantial improvement of the quality of education throughout the school system with additional provisions for the improvement of the quality of education in non-integrated schools. Finally, it provides for the support of the expansion of magnet school opportunities as per the Agreement in Principle and the Detailed Implementation Plan.

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A. Improvement of the Quality of Education Throughout the School System

Introduction

Consistent with the terms of the Agreement in Principle, the City Board has analyzed the needs of the school system and proposes herein the measures it would take to improve the quality of education in all of its schools. There are needs which relate to the improvement of curriculum and the quality and range of learning experiences to which students have access and there are critical needs which relate to the instructional and management support services which are required to ensure that all students have access to an education which is consistently high in quality. There are also critical needs which relate to the condition of the school system's aging school facilities. These needs must be addressed to ensure that the physical learning environment is supportive of an improved instructional program. Those needs which relate to the improvement of the quality of education throughout the school system are identified in this section as are the programs and efforts required to address those needs.

A. Improvement of the Quality of Education Throughout the School System

1.0 *Improvement in Instructional Programs*

1.01 Curriculum Development

*The Need*

Curriculum which encompasses all of the learning experiences planned and provided by the school is the basic tool of an educational system. There is a need to constantly improve learning experiences through curriculum development activities. Curriculum must speak to a broad

range of learning styles, a variety of needs of students and provide for appropriate measures to meet those needs.

Urban centers with a diversity of population need a structured plan for curriculum development. Students in urban centers consistently score below level on standardized achievement tests. Curriculum development activities must address the need to improve the achievement levels of the students served.

Additionally, there is the need for an interdisciplinary approach to curriculum development with infusion of specialized areas of study to meet all the needs of students.

#### *Program Description*

A five-year curriculum improvement plan will be implemented. In addition to the regularly planned review and revision of subject matter areas, specific attention will be given to some areas that have evidenced a need for greater consideration. Science and mathematics are among those subject areas. Career education concepts will be infused with the social studies curriculum. Law related education will be addressed in an interdisciplinary approach and a computer literacy program will be developed for teachers and students.

Committees of teachers of all subject matter areas will be formed as each subject area is revised. For example, if communication curriculum skills is being revised, the major representation on the committee will consist of those knowledgeable in that area, with minor representation from all other curricular areas to serve in an advisory capacity for short periods of time.

During the 1983-84 school year, additional staff will be assigned to ensure efficient curriculum development and production. A continuous schedule of development, revision, piloting and implementation will be followed for all subject areas.

## 1.02 Curriculum Supervision

### *The Need*

There is a need to ensure that curriculum is implemented effectively and efficiently. Teachers and school level administrators need assistance as new curriculum is implemented, as well as ongoing assistance in curriculum implementation.

Additionally, there is the need to provide objective feedback to the curriculum developers on the effectiveness of curricula as well as to give guidance on inservice needs. The Division of Curriculum Supervision will meet these needs.

### *Program Description*

Curriculum Supervision personnel will study all curriculum development projects to become familiar with the scope, sequence and implementation strategies of curriculum. The personnel will be actively involved in the pilot phase of curriculum development to become aware of and assist in refining the implementation strategies.

Personnel of this division will visit classrooms, observe implementation of curriculum, teach demonstration lessons, and provide feedback to teachers, administrators and curriculum developers.

The Curriculum Supervision Division will engage in all activities required for the organization of a new division. Personnel will be assigned by subject area categories. They will study the five-year curriculum revision plan and gain familiarity with comprehensive competency-based materials. Visitations to schools by curriculum supervision personnel will occur on an ongoing basis.

## 2.0 *Increase Access to Learning Media Resources*

### 2.01 Upgrade Library/Media Services

#### *The Need*

Presently, the Library/Media Center is capable of providing centralized cataloging and processing of library materials for school libraries only on a very limited basis. There is a need to expand and upgrade the level of services currently available to all schools. There is a need to provide qualified and adequate staff to all schools and the Library Service Center. Provision of these services will assist the system in regaining the AAA rating in this area.

#### *Program Description*

The Library Service Center will provide centralized cataloging and processing services. The delivery of materials to school libraries will take place expeditiously. Professional staff will be assigned to the Library Service Center and to all elementary, middle and secondary schools. Services in all St. Louis Public Schools will be expanded and upgraded to meet the AAA Standards of the State of Missouri and the North Central Association Standards for Secondary Schools.

### 2.02 Audio Visual Services

#### *The Need*

There is a need to improve instruction in all curricular areas by increasing access to a central loan library of instructional materials and services including films, equipment loans, the preview and evaluation of instructional media and equipment, circulation of sound filmstrips, and topical publications.

There is also a need to address the rapidly changing technology in the communication field. Specialists in the field

now predict that within five years or less transmission of materials will probably shift from optical methods of projection: motion picture, slide, etc. to electronic carrier systems such as video disk, microcomputers, and Cable TV.

### *Program Description*

Audiovisual Services is a loan library of instruction equipment, 16MM films, video tape and objective materials. These materials and equipment are available to all teachers, Kg.-grade 12, within the St. Louis Public School System. All materials and equipment are previewed and evaluated and selections and purchases are made with teacher input. Delivery services are provided.

### *3.0 Provide Adequate Level of Staffing*

#### *3.01 Reduce Pupil-Teacher Ratios to County Average.*

#### *The Need*

Pupil-teacher ratios in the city district must be equivalent to the ratios utilized in the county districts. If educational experiences offered by all schools in the metropolitan area are to be considered equivalent regardless of location, consideration must be given to the equalization of pupil-teacher ratios. Class size cannot be substantially different in the various districts participating in the plan if pupils are to voluntarily transfer between the districts. This component will assist in restoring the AAA rating to the school system in the area of class size.

### *Program Description*

Pupil-teacher ratios would be lowered to 25:1 in Kindergarten, 26:1 in grades 1-3 and to 30:1 in grades 4-12 for the 1983-84 school year. It is proposed that the ratio be reduced to the County average within five years.

3.02 Restore Art, Music and Physical Education Staff

*The Need*

In order to retain the AAA rating, art, music and physical education teachers must be restored. To provide a quality well-rounded instructional program, the services of such personnel are required.

*Program Description*

Provisions would be made to restore these positions through the recall and hiring of staff.

3.03 Provide Science Lab Teachers and Aides for Elementary and Middle Schools

*The Need*

There is need to improve instruction in the area of science. This need is evident nationwide as well as in the city of St. Louis. Addressing this need early in the student's educational career and providing fully qualified science teachers will assist in meeting this need.

*Program Description*

Science teachers will be assigned to address the need for qualified science teachers in middle schools. Aides will also be provided. Additionally, science teachers and aides will provide science instruction for elementary school students on a regularly scheduled basis using mobile science lab units.

*Implementation*

Middle school science teachers and aides will be assigned in 1983-84 and elementary science teachers and aides will be assigned in 1984-85.



### 3.04 Increase the Level of Services for Handicapped Students

#### *The Need*

Children with handicapping conditions must be identified and provided with appropriate instructional and support services in a more timely manner. The quality of services to handicapped students needs to be upgraded as soon as possible. There is a need for additional staff to provide the screening, evaluation and diagnostic services which are required within specified time periods. Additionally, more specialized classrooms must be provided to address the instructional needs of handicapped students.

#### *Program Description*

The special education program provides screening, evaluation, diagnostic, placement and instructional services to students with a wide range of single and multiple handicapping conditions. These conditions range from mental retardation to speech, hearing, orthopedic, visual and hearing impairments. In some instances, services must be provided in specialized building facilities. Programs for pre-school hearing impaired children would also be provided under this plan. Staff would be provided to ensure that the basic needs of handicapped children are met in a timely, comprehensive fashion.

### 3.05 Increase Nursing and Counseling Services

#### *The Need*

There is a need to address the physical and other basic needs of students to ensure that they receive the best services possible. The assignment of additional nurses and counselors will help meet this need. This component will also address the need to restore the AAA rating in the area of Pupil Personnel Services.

### *Program Description*

Nurses will be assigned on the basis of one per high school and one per 500 students on a full-time equivalent basis for elementary and middle schools. Counselors will be assigned to elementary schools on the basis of the State recommended ratio of 1:750 students.

#### *4.0 Provide for Special Needs of Students*

##### *4.01 Develop and Implement Early Childhood Education Program*

##### *The Need*

There is a need to provide parents with the knowledge, skills and techniques to prepare their infants and children to profit from their formal educational experiences. There is also a need to ensure that infants receive the support services and experiences needed to prepare them to profit from pre-school training. There is also a need to prepare three and four year olds to enter kindergarten at the appropriate level of readiness and proceed through the educational program at the expected rate of progress.

##### *Program Description*

Two components will be implemented. (1) Early Infant/Parent Centers will provide services for parents and infants. (2) Pre-school centers will provide services for children ages three and four and will include a parenting component. Cognitive, physical, social, emotional and psycho-motor aspects of child development will be addressed for infants and children. Parents will gain knowledge of the developmental stages of children and community support services, as well as specific techniques for working with infants and children.

##### *Implementation*

The first year will be a planning year. Sites will be located, inservice training for center staff will occur. In

year two, four pre-school centers and four early infant/parent centers will be opened and operated. For year three, eight additional pre-school centers will be opened and operated. Year four will be used for in-depth evaluation. In year five, three additional pre-school centers and four additional early infant/parent centers will be operational. These centers will be strategically located to provide services to all areas of the city.

#### 4.02 Expand Opportunities for All-day Kindergarten

##### *The Need*

Many kindergarten children are slow to develop physically in terms of large and small muscle development and coordination. Many are slow to develop socially, in that they lack readiness for small group activities; and still more are slow to develop linguistically, in terms of ability to speak, listen, and understand. As Dr. Mildred Winter of the Missouri State Department of Education has stated, "Five-year-olds learn by doing, seeing, hearing, feeling, exploration, manipulating and asking questions. All of these activities take time and personal attention." The All-Day Kindergarten Program would address these needs.

##### *Program Description*

The All-Day Kindergarten Program will expand and improve educational opportunities for children in 1984-85. The program will provide extensive opportunities for children to gain the necessary cognitive, affective and psychomotor skills which are required for success in school.

##### *Implementation*

All planning activities required for implementing the All-Day Kindergarten programs will occur during year one. Beginning with year two, all-day kindergarten programs with a pupil-teacher ratio of 20:1 will be operated for all entering Kindergarten pupils system-wide.

#### 4.03 Restore After-School Tutorial Program

(An alternative Enrichment, Developmental, Support Program for Secondary Students)

##### *The Need*

There is a need for an alternative secondary program to address the needs of pupils who require additional academic assistance, desire to further their education through experiences which are not generally available in their regular schools, or for a number of reasons require special educational services.

##### *Program Description*

The alternative program would be composed of three components: (1) an enrichment component to provide services to pupils desiring additional academic experiences; (2) a developmental component to provide services to pupils requiring additional assistance to insure success in academic endeavors; and (3) a support/alternative component for pupils who, because of special circumstances, need special attention to assist them in the continuation of their education.

Programs will be offered in the general high schools at specified city-wide centers and will be offered at times which do not conflict with the regular programs to which pupils are assigned.

##### *Implementation*

One after-school tutorial site will be opened in the Fall of 1983. An additional site will be opened in the Fall of 1984. These programs will be located strategically so as to provide reasonable access to services. Instruction will be structured to meet the needs of individual students. Pupil personnel support services will also be provided.

#### 4.04 Establish an Alternative High School

##### *The Need*

There are many students with special learning needs which can lead to discipline problems unless appropriate assistance is provided. Such problems can be prevented and students can successfully complete high school if provided with an appropriate level of services.

##### *Program Description*

Students will be 14 years old or older. They will be placed into small instructional groups and an individualized approach to instruction will be used. It is proposed that an individually guided instruction methodology be explored as a means of organizing the educational structure of the school. This could provide for an individualized approach to instruction based on objective-oriented teaching strategies. Such an approach might follow the format of: team leaders chairing staff groups at grade levels to plan instructional approaches and cross-grade-level groups allowing students working at the same level or on a specific skill to work together. Staffing will feature a 10:1 pupil-teacher ratio, a counselor for every 30 students, two resident school psychologists and a social worker for every 50 students. Additional testing and psychological services will be provided as needed.

##### *Implementation*

During 1983-84 staff will be selected and trained. Curriculum will be developed and a site will be located and prepared. Beginning in school year 1984-85 the alternative high school will become operational and provide services for students needing this level of attention. If needs direct, a second site will be determined, all appropriate steps taken, and an additional site opened in 1985-86.

#### 4.05 Tri-A Outreach Program for Dropouts and Expelled Students.

##### *The Need*

There is a need to identify students who have been expelled or who have dropped out and offer them a second, third, fourth or more chance. Giving up on them completely is abrogating responsibility for aiding them to become productive members of society.

##### *Program Description*

This program has two components: (1) A methodical search program which would identify and locate dropouts and expelled students who have not yet reached 21 years of age. When identified and located, students would be given the opportunity to take classes toward obtaining their GED or re-entering regular school. (2) A network of outreach classrooms would be set up throughout the city. Their locations would be in both public and private institutions such as the St. Louis Library branches, YMCA's, YWCA's, Dignity House, Wesley House and Murphy-Blair Outreach Services. They would not be located in active school buildings.

##### *Implementation*

Planning, site selection and preparation would take place during the summer and fall of 1983. The center would become operational in January of 1984.

#### 4.06 Prepare Ninth Graders for Accelerated Courses

##### *The Need*

There is a need to identify capable eighth grade students and to encourage them to pursue a challenging course of study in high school. There is a need for closer coordination between the activities and efforts of eighth grade



teachers and secondary schools. Eighth grade teachers know the capabilities of in-coming ninth grade students, and can match the accelerated courses or activities with the student's level of ability. There is also a need to provide students with advanced placement course opportunities off-campus.

### *Program Description*

A coordinator will serve as a liaison between home, school and off-campus institutions offering upper-level elective courses and advanced standing course opportunities. There will be an improved dissemination of current advanced elective course offerings. The target audience will include eighth grade teachers, parents, students and various institutions of our community.

## 4.07 College Prep

### *The Need*

There is a need to assist the college bound student in developing the attitudes, skills and knowledge that will ensure success in college. Students who are not achieving on level need to be provided with individualized instruction to help eliminate deficiencies and make attendance at college a possibility for them.

### *Program Description*

The program is designed to make available to students advanced courses not available in the regular program. Individualized instruction is available for those students needing assistance in removing any deficiencies they possess. Opportunities are available to have tutors assist in the areas of communication skills, mathematics, social studies, science and foreign language.

### *Implementation*

There are currently two College Preparatory Programs in two high schools. Additional programs will be phased

in so that a College Prep program will be offered in all regular high schools. Facilities in the high schools will be located, staff will be trained, and students recruited as the program is expanded at the rate of a College Preparatory Program for two general high schools per year. The first expansion is scheduled for 1984-85.

#### 4.08 Increase Access to Cooperative Education Programs

##### *The Need*

There is a need to increase the accessibility and range of opportunities to participants in cooperative education programs. There is a need to equalize program offerings in the general high schools. That is, all high schools should offer all cooperative education options including subsidized work experience programs in the public sector for students who are unable to be placed in regular coop programs. There is a need for the expansion of supervisory and support services for the coop programs in the general high schools. Finally, in order to service interested students, there is a need to establish new linkages with business and to provide additional work-study programs.

##### *Program Description*

Students who participate in cooperative and work study programs attend classes in their home high school during a portion of the day and work-study off campus programs the remainder of the day; or, they pursue classes which meet graduation requirements at work study attendance centers a portion of the day and "on the job sites" for supervised employment the remainder of the day.

#### 4.09 Gateway Summer Institute

##### *The Need*

There is a need for a strong academic and leadership program to prepare academically able secondary students

for a more challenging and self motivating academic experience. Additionally, there is a need to place continued emphasis on academic achievement and to provide course offerings that are more specialized and challenging than those offered during the regular school year.

### *Program Description*

The program, to be known as the St. Louis Public Schools Gateway Summer Institute follows the design of the successful Laclede Chouteau Institute, a summer program that was operative during the summers of 1965 and 1966.

The Gateway Summer Institute will serve nine hundred (900) students. Acceptance by a screening committee will be based on the following criteria:

1. Submission of an application
2. Two letters of recommendation from teachers.
3. Approval of the building administrator, where applicable.
4. Parental consent.
5. Programmatic needs and availability of space.

### *Implementation*

The ability to implement the Gateway Summer Institute will depend largely upon the date of approval. Should insufficient time be available, it is proposed that this program be implemented in the summer of 1984 rather than 1983 as currently planned.

#### 4.10 Student Leadership

##### *The Need*

The need for good student leadership in large urban areas today is evidenced by the many problems besetting

12-19 year olds. There is a need to identify and select those students demonstrating qualities that are attributable to leaders and to provide programs that prepare students for this role. There is a need to develop leadership skills in our youth.

### *Program Description*

The Student Leadership Program is a multi-level program designed to promote student involvement in investigating leadership styles, building leadership skills and applying these skills in service projects. There are four major divisions within the program.

- Honors Leadership Class*—A part-time program, which meets daily for a one semester course for one unit credit. The course is designed for sophomores. The focus is on leadership growth through experiences in community, culture, environment/ecology and human relations.
- St. Louis High School Leadership Program*—This is a two year program for high school junior and senior students. The focus is on “the servant”—leaders in a pluralistic society.
- Leadership Opportunities Community Action Learning (L. O. C. A. L.)*—This is a one-year curriculum enrichment program for junior level social studies classes.
- National Leadership Conference—Ozark*—This is a ten-day summer residential conference, conducted in a retreat setting on the Lake of the Ozarks. It is open to selected high school sophomores.

### *Implementation*

In the first year plans will be made to expand program offerings and activities to all middle school students and to all secondary students. This program, which is pres-

ently operational, will continue and gradually expand as additional staff is phased in.

#### 4.11 English as a Second Language

##### *The Need*

There is a need to improve instruction in English as a Second Language (ESL) by using computer assisted instructional programs. There is also a need to provide limited English proficient students with drill and practice-type instruction in the content areas of mathematics, science and social studies. This would be accomplished through the use of the native language and micro-computers.

##### *Program Description*

Two components will be implemented. (1) Micro-Computer component for ESL students will enable them to learn English at a much more rapid pace. (2) ESL students who are in danger of falling seriously behind in their studies or who because of detainment in refugee camps or the like have already fallen seriously behind will be given extra drill and practice material in mathematics, science and social studies. An attempt will be made to bring them up to level in their language while they are studying English. Under Component 1, English as a Second Language will be addressed and under Component 2, the other disciplines will be addressed, where possible, in the native language of the students.

##### *Implementation*

Micro-computer instruction will begin in the 1984-85 school year. Services will be provided in one additional middle school site for year three. New staff will be hired and trained over a five year period.

## 5.0 *Programs for Students with Special Talents and Interests*

### 5.01 Honors Art and the 4th R Gallery

#### *The Need*

Students with special talents and interests in art do not have the opportunity to expand their skills fully in the regular high school program. Facilities and staff allocations do not permit the advanced, specialized training needed by artistically talented students. The Honors Art program currently serves talented students at the high school level and the 4th R Gallery serves classes of students at the elementary and middle school level. However, there is a need to expand and upgrade these services and to make them more accessible to students. The provision of quality educational experiences must include specialized programs for artistically talented students.

#### *Program Description*

The Honors Art program is a nationally recognized program which provides intensive, advanced specialized learning experiences for artistically talented students. Participants in the program attend for one-half day on a daily basis and take academic and other courses at their regularly assigned high schools. Honors Art students work with highly skilled teachers and artists who have received recognition for their artistic ability.

The 4th R Gallery provides specialized art instruction for children in classes ranging from kindergarten through the eighth grade who come from schools in both the City and the County.

### 5.02 Music Center (Honors Music)

#### *The Need*

There is a need to provide programs for students with special talents in music who cannot be served adequately



in the regular music program in the schools. Such students need specialized opportunities to develop their talents as fully as possible.

#### *Program Description*

A Music Center will be established to provide instruction in vocal and instrumental music for students in grades 8 through 12. Students will spend part of the day at the Music Center and the other portion of the day at their home school. The overarching objective of the Music Center will be the development of an Honors Music program.

#### 5.03 Expand and Improve Extra-curricular Athletic Activities

##### *The Need*

There is a need to improve the services offered by the Public High League to its member schools. There is a need to expand and improve the present athletic program. In order to do so, there is a need to hire additional coaches and to improve the Public High League athletic facilities and site equipment. Students need opportunities to participate in organized sports. Such opportunities may lead to lifelong interests and skills as well as open doors to higher education.

#### *Program Description*

Because of the increase in services to be offered within the Public High League, expansion will be necessary in that office. The present athletic program will be expanded by acquiring additional game officials, nurses, announcers, scorers, timers, ticket sellers, ticket takers and security officers. Coaching positions will be filled to make the athletic program comparable to that being offered in St. Louis County school districts. Virtually all positions are part-time.

## 5.04 Mass Media

### *The Need*

There is a need to provide larger numbers of students with more extensive instruction in Media as an avenue to related careers either through higher education or entry into the work market.

### *Program Description*

This is a part-time program. Areas of instruction will include radio, television, filmmaking, photography and journalism. Theory and applications will be included. Students will develop writing, editing, and speaking skills, as well as gain technological skills associated with both print and electronic media. Partnership type relations will be formed with commercial TV stations, newspapers, businesses and the school system's radio station. Cable television will be incorporated into the Mass Media Program as feasible. The plan involves an expansion of the present Mass Media Program.

### *Implementation*

The first expanded offerings in Mass Media will be available in the 1984-85 school year.

## 5.05 KSLH; Cable TV

### *The Need*

There is a need to improve educational programming and provide facilities for practical broadcast experiences for students enrolled in Mass Media courses at McKinley, Visual and Performing Arts High School and Middle School (Marquette). There is also a need to prepare for the use of cable television in instructional areas system-wide.

### *Program Description*

Students from mass media and Visual and Performing Arts High School may prepare scripts and broadcast

programs using KSLH facilities. Planning and negotiations for a cable TV franchise will occur as these capabilities become available.

## 6.0 *Use of Community as a Learning Resource*

### 6.01 Springboard to Learning

#### *The Need*

There is a need to strengthen the cultural awareness and understanding of students, a need to create an atmosphere of acceptance of cultural diversity and to broaden the perspectives of those involved in a desegrative experience to that of global living in harmony with all people.

#### *Program Description*

Springboard to Learning provides a staff of professionals in the areas of the arts, sciences, and humanities who work in elementary schools one day a week for a 14-week session. Half of the staff are natives of other countries; all of the Springboard programs are multi-cultural and stress cultural understanding and appreciation.

Each Springboard teacher presents his/her specialty area to five classrooms of students. Classroom teachers stay in the room for Springboard classes in order to maximize the effect of the program during the rest of the week. While normal school supplies, such as paper, scissors, etc., are provided by the school, all other specialty materials, artifacts, clothing, food, tools, are provided by Springboard.

### 6.02 Provide Access to the Science Enrichment Project in Cooperation with Saint Louis University

#### *The Need*

There is a need to provide a strong supplemental science oriented program to improve the quality of instruction in

these disciplines. The development of skills in the scientific fields becomes increasingly important to our students as society incorporates more and more technology into everyday living. The nationwide shortage of qualified teachers in the areas of science and mathematics has had an adverse impact on the opportunities our students have to acquire the requisite skills in these areas.

### *Program Description*

Utilizing the scientific resources of St. Louis University and the community, the Science Enrichment Project will strengthen and improve the opportunities of public school students to acquire basic scientific skills by:

- A. Developing hands-on experiential learning programs to increase student knowledge of scientific principles.
- B. Providing students with the opportunity to integrate theory with the practical applications of scientific methods.
- C. Providing resource personnel and developing materials to supplement and support existing school science programs.
- D. Expanding access to community resources.
- E. Examining the impact of culture on the development of the city by using the city as a classroom.
- F. Providing teachers in-service workshops in the scientific disciplines to enhance the overall quality of instruction.

### *Implementation*

St. Louis University will provide in-kind contributions, housing for project staff, office furniture, utilities, book-keeping services and faculty resources, in support of the project. Since the project is envisioned as a contract with

the University, The St. Louis Public Schools will not require any additional administrative or certificated personnel to support this project. The project personnel phase-in requirements to support the contract assumes an increasing increment of 10 classes per year per component for the first three years with the number of classes remaining constant thereafter.

### 6.03 Pairing and Sharing Program

#### *The Need*

There is a need to provide students an opportunity to work and learn cooperatively in integrated situations and to reinforce instruction and promote cooperative projects by using community resources. There is a need to provide opportunities for more creative and imaginative curriculum planning. Finally, there is a pronounced need to provide opportunities to expand the classroom beyond the confines of the school and expose students to the world around them in a planned, educationally sound fashion.

#### *Program Description*

The Pairing and Sharing Program will respond to the above stated needs by offering opportunities to thousands of students from elementary, middle and high schools the chance to participate in many innovative and rewarding experiences that afford student opportunities for shared trips to cultural and educational sites where they work cooperatively to create and complete curriculum related projects and provide for the exchange of ideas and activities between teachers and administrators of paired schools.

### 6.04 School Partnership Program

#### *The Need*

The St. Louis School Partnership Program is a local response to problems that exist in most urban school

systems. The School Partnership Program addresses the need to prepare the student for a successful transition from school to the world of work, whether that may be a job immediately after graduation or continuing education at a community college, trade and/or technical school or a four-year institution of higher learning. There is a need to educate students for a life that likely will encompass more than one career or job and will require retraining to keep pace with rapid technological changes.

### *Program Description*

The School Partnership Program is currently addressing some of the needs stated above by providing 10-12,000 students from 15 high schools, 24 middle schools and 40 elementary schools with multi-session instructional programs that:

1. Enable volunteers from businesses, professional organizations, and community and government agencies to assist teachers in reinforcing their instructional objectives by working with students in the classroom and at business and community sites.
2. Use the educational resources of 14 cultural agencies to improve academic achievement in the arts and humanities.
3. Involve the faculty of 4 universities and colleges in a variety of academic programs.
4. Provide opportunities for the professional development of teachers by means of workshops and training sessions at businesses and cultural agencies.

The School Partnership Program will increase the number of partnerships between schools and businesses by fifteen.



### *Implementation*

A three year pilot program between a middle school and a business will be established. Personnel of the program will continue to schedule and implement seminars, field trips and class sessions for students. Additional staff will allow for increasing services offered.

#### *7.0 Instructional Support*

##### *7.01 Expansion of the Educational Intervention Plan for More Effective Schools*

#### *The Need*

Schools must be responsive to the needs of students and provide meaningful, successful learning experiences for them. While some early efforts indicated otherwise, recent research has demonstrated that there are particular characteristics of schooling which are especially effective in teaching basic skills to urban children. All available knowledge regarding effective instructional methodologies must be used in helping students achieve academic success.

#### *Program Description*

Research has demonstrated five factors which are characteristics of effective schools: (1) strong administrative leadership; (2) high teacher expectations; (3) positive school climate; (4) an emphasis on basic skills; and (5) ongoing student assessment. These five factors have been utilized in a pilot program in the city school system for the past two and one half years. The process provides a means whereby staff, parents, and students can cooperatively participate in implementing a program to enhance academic achievement in urban school settings. This proposal specifically responds to the need for the more effective provision of education in the schools of the City of St. Louis by proposing a comprehensive expansion of the effective schools intervention concept to all of the city's schools.

## 7.02 Establish a Staff Development Unit

### *The Need*

There is a need to provide opportunities for all staff to increase knowledge and skills required for effective and efficient performance of their job requirements. There is a need for planned, structured, sequential inservice experiences for staff. To meet these needs a division for staff development must be established.

### *Program Description*

Teams of staff development personnel will plan and implement inservice sessions to improve curriculum delivery, teaching and human relations skills.

## 8.0 Other Support Services

### 8.01 Improve the Quality of Food Services and Expand the Breakfast Program

#### *The Need*

There is a need to improve the quality of food services to all St. Louis public schools and to improve food service facilities in the high schools and the lunchroom environments in the elementary schools.

#### *Program Description*

The breakfast program will be expanded to include more schools; ten high schools and 90 to 100 elementary schools will be involved in the program to improve Food Service facilities over the next five years.

### 8.02 Upgrading of Roving Security Guard Services for Elementary Schools

#### *The Need*

The safety and well-being of elementary students and staff is of primary importance. The St. Louis Metro-

politan Police Department is unable to provide the full range of services needed by the schools. Therefore, the schools must rely heavily upon their own security staff to ensure the safety and security of elementary students and personnel and maintain an environment conducive to learning.

### *Program Description*

Individual roving security officers are assigned to groups of schools. The security officers visit each assigned school on a regular basis, check the school area for security problems and consult with school personnel. Roving security officers have two-way radios and can be contacted and dispatched in a timely fashion.

## 8.03 Upgrading of Security Guard Services in All Secondary Schools

### *The Need*

The safety and well-being of secondary school students and staff of the St. Louis Public School District is of primary importance. The schools must rely heavily upon their own security personnel to ensure the safety of secondary students and personnel, maintain an environment conducive to learning and teaching, and ease tensions among students and others that arise out of efforts to reduce racial isolation. Additional security personnel are needed to provide the necessary security for secondary schools.

### *Program Description*

Secondary security guards are assigned to high schools and are considered as members of the school staff. They prevent disruption by controlling the entry of unauthorized persons and assist in easing tensions when interpersonal conflicts arise.

#### 8.04 Upgrade the Incident/Vandalism Reporting System

##### *The Need*

The Incident/Vandalism Report is compiled to keep the administration abreast of the number and type of security related incidents and the loss of equipment and damage to property. Presently, the information is manually compiled and distributed by substitute clerical help. A more efficient, cost-effective method of maintaining and distributing this information is needed. Permanent help and equipment are required to accomplish the task.

##### *Program Description*

The Incident/Vandalism reporting system is a mechanism for monitoring illegal entry to buildings and the theft of equipment and vandalism to school system buildings and property. This system provides for reporting appropriate information to the Police Department and is an important mechanism for the retrieval of stolen property. Permanent clerical assistance would be acquired to ensure the effective functioning of this component.

#### 8.05 Strengthen School-Parent-Community Communication and Involvement

##### *The Need*

There is a need to fill the void that exists in written communication between the school, home and community. There is a need to develop programs and establish organizations that would serve as vehicles to bring about dialogue between school personnel, interested parents and citizens. There is a need to provide access to relevant information and to provide opportunities for involvement in school affairs by parents and other interested parties.

##### *Program Description*

Ten schools will be selected in each of the four administrative areas. Each school, with the assistance of an

Area Coordinator and the Area Team, would begin a full scale communications program tailored to meet the needs of the school. Attention will be focused on improving the operation of existing parent/community organizations and better utilization of parent volunteers. Information packets will be provided for the families in each school. A monthly newsletter will be published to keep the parents and citizens of the community informed of events relating to the entire school system. The Area teams will work closely with the established PCAC groups.

In addition to these program activities, the staff of this unit will provide the key administrative support necessary to conduct the Parent and Staff Seminars program and the Parents as Teachers program in the non-integrated schools.

#### 8.06 Strengthen the Capabilities of the Public Affairs Unit

##### *The Need*

The Public Affairs Division needs to use every means to keep the community accurately informed about its schools, and the schools informed about the community's attitudes, aspirations and needs. In a community which has been racially separated for many years, a massive communication effort is needed to correct past stereotypes, fears and prejudices. By providing information in many different ways on a wide basis over a period of time, the schools hope to change attitudes and overcome problems resulting from efforts to desegregate the schools.

Students who wish to transfer from the city or county need to be provided with complete and timely information regarding the choices available to them. The attractive programs in the city schools must be presented in a way that will enable them to compete for county students.

##### *Program Description*

Publications curtailed this year will be restored as will be other printed, audiovisual and broadcast capabilities

in order to advertise programs and inform the public. Informational brochures, slide tape presentations and public service announcements will be produced.

#### 8.07 Upgrade the capabilities of the Controller's Office Accounting and Auditing Services Section

##### *The Need*

As new programs are implemented, the increase of equipment purchases and the transfer of equipment between locations will require additional decalling and maintenance of files and records in order to efficiently safeguard the investment in equipment. There is a need for additional staff to ensure that these services are adequately provided.

##### *Program Description*

All activities required for pre- and post- auditing of purchase orders, pre- and post- auditing of all payroll documents, and monitoring the purchase and/or transfer of equipment will be implemented.

#### 8.08 Upgrade the Services of the Insurance Department

##### *The Need*

There is a need to enhance the capability of the Insurance Department to provide timely and comprehensive information and services to all employees regarding their benefits. The quality of education depends, among other factors, on the morale and well being of teachers. Benefit explanations, accessibility and help with claims relieve anxiety and stress, improve morale and meet a basic need of staff.

##### *Program Description*

A clerk would help staff by answering questions regarding coverages, premium costs for dependents and procedures, by sending out claim forms, reviewing disputed claims, processing additions or deletions of dependent cov-



erages, and by typing periodic benefit information bulletins for systemwide distribution. Employees would be made more aware of the availability of Tax Sheltered Annuities, a very important benefit.

#### 8.09 Upgrade Insurance Administration Services—Job Injuries

##### *The Need*

There is a need to improve the delivery of services for employees injured on the job, to reassure them and to assist in their return to classrooms or job sites as soon as possible.

##### *Program Description*

All principals will be furnished with specific guidelines for use when an employee is injured. A special notice will be given to each injured person addressing questions which might arise. Monitoring capabilities will be established to ensure that injuries are reported promptly to the Insurance Department and that medical bills are processed in a timely manner. Liaison will be established between the injured teacher, the principal, the Personnel Office and the physician to alleviate anxieties and misunderstandings and to ensure continuation of benefits and to provide for returning to the classroom.

#### 8.10 Insurance Administration— Safety of Buildings

##### *The Need*

There is a need to promote and establish safe environments for teachers and students. Safe environments produce an atmosphere conducive to learning and reduce the risk of injuries to teachers and students.

##### *Program Description*

All schools will be inspected and safety defects will be reported to appropriate parties for remedy. Reports of injuries will be analyzed so that hazardous conditions and practices can be identified and corrected. Periodic

safety reminders and bulletins will be distributed with payroll through the Treasurer's Office. Seminars for supervisory staff will be conducted emphasizing safety considerations and accident prevention. Programs for children will be developed in conjunction with outside public agencies. These programs will deal with safety in everyday life.

#### 8.11 Purchasing, Warehouse, Pick-up and Delivery of Supplies and Materials

##### *The Need*

The Materials Management operation is responsible for the purchasing, warehousing and delivery of textbooks, supplies, equipment, food and furniture for the St. Louis Public School System. Additional resources are needed to carry out these support functions and to ensure that shortages do not hamper the instructional program.

##### *Program Description*

The Purchasing Division will receive and process Form H requisitions. The Central Warehouse will receive, house and distribute catalog items related to textbooks, educational, office and custodial supplies, furniture, food and equipment. Additionally, catalog items used by the Building Maintenance Divisions will be housed and distributed.

City Board-owned vehicles will deliver food, supplies, textbooks, equipment and building supply materials to school locations from the warehouse and make deliveries between schools and offices in a timely manner.

#### 8.12 Improvement of Financial Administration and Budget Support Services

##### *The Need*

There is a need to maintain and improve budget planning, development, monitoring and control functions to

adequately address the additional requirements and volume of related activity under the settlement plan. Improving the quality of education throughout the St. Louis Public Schools requires prudent stewardship of all financial and human resources. Additional staff assistance is needed in both the strategic and operational financial planning affairs of the school system as well as in the coordination of proposed educational plan budgets for decision makers.

The St. Louis City Schools currently utilize a one-year planning horizon for all financial and human resources. Expanding the planning horizon will require a significant metamorphosis in planning guidelines, compensation and employee benefit plans and budget support systems. There is a critical need for this division to maintain and improve relationships with financial administrators of other school districts and the State. Extensive familiarity with the operating mechanisms of other districts will be critical, especially so in consideration of proposed exchanges of both students and staff.

#### *Program Description*

Additional staff would be added to the Budget Planning and Development and Budget Monitoring and Control Sections to address the need to coordinate the desegregation plan budgets in line-items, program and summary formats and the need for supporting personnel accounting systems.

- 8.13 Increase the Capability of the Desegregation Monitoring Office to Provide Planning and Monitoring Service

#### *The Need*

Under the settlement plan, the number of interdistrict transfer students will increase dramatically as will student access to an increased number of magnet schools

and expanded specialty programs. The scope of desegregation-related programs and the complexity of interrelationships will be greatly increased. These changes and many others will occur within the context of the school system's continuing responsibilities under the intracity desegregation plan. A concerted effort will be made to improve the quality of education throughout the school system with special provisions for schools which remain non-integrated. Interdistrict transfer enrollment and trend data and facilities usage will require careful analysis to ensure that appropriate adjustments are made. New magnet school sites must be selected. There is also a need to monitor the implementation of all settlement plan components for which the City Board is responsible so that problems and potential difficulties are identified and addressed promptly and children are not adversely affected. Some additional resources are required to address these needs.

### *Program Description*

The Desegregation Monitoring Office is responsible for the ongoing review and reporting on all desegregation components. It is responsible for the collection and analysis of data and information relating to the implementation of desegregation plan components and provides administrators with information relevant to modifications which may be advisable. Progress reports are produced and disseminated as are planning support documents to assist administrators in their review and modification of desegregation components.

#### 8.14 Enhance the Capabilities of the Personnel Office to Provide Personnel Support

### *The Need*

The need for reports on personnel information and related requests/surveys by monitoring agencies, attorneys,

other offices in the school system, the state department, the federal government and the Court requires collection from various sources and compilation of data in various formats. A central authority having responsibility for responding to such requests would be in a position to organize and coordinate the reporting requirements and improve services to users of personnel information.

### *Program Description*

The Office of Personnel Data and Reports will gather and compile information requested by attorneys, monitoring agencies, offices within the system and other interested parties.

### 8.15 Strengthen the Long Range Planning Capabilities of the District

#### *The Need*

Proactive planning is essential to the future of the St. Louis Public Schools—a school system which is experiencing declining enrollments, declining revenues and aging facilities. The school system operates within the context of a Court ordered intracity desegregation plan and is preparing to participate in a metropolitan-wide voluntary settlement plan which extends the promise of an end to Court supervision within seven years. Within the context of this complex array of circumstances, the ability of the school system to provide quality educational experiences for the children and youth of the community rests in large measure on its ability to predict future events and circumstances and to plan accordingly. The planning must be logical, systematic and comprehensive to ensure that scarce human and material resources are targeted effectively and efficiently toward the achievement of the school system's objectives. This will require the development of a strong and dynamic planning component and the service units to support it.

*Program Description*

The long range planning unit will serve a central management support function and will be structured and equipped to facilitate the design of the future of the school system. The unit will address the need for consistent and focused direction for development and implementation activities within the school system and for coordination of objectives and activities among support units in schools. It will address the need to organize for efficient and effective use of human and material resources. The unit will also utilize the findings of research and evaluation in developing projects and programs. It will facilitate planning which extends from goal-setting, needs assessment and problem analysis to the formulation of objectives and the design of strategies to achieve them. The unit will facilitate a systematic, logical approach to decision-making. The long range planning unit will develop alternative scenarios and simulations based upon trend data, projections and desired objectives.

*9.0 Improvement of the Quality of School Facilities**9.01 Facilities Component Program Related to Instructional Improvement, Deferred Maintenance and Improvement of Learning Environment (Contracted Work and Services)**The Need*

The St. Louis Board of Education is currently responsible for the operation and maintenance of more than 9 million square feet of aged building facilities on more than 140 sites. The general condition of these facilities is one of rapid deterioration, extreme deferred maintenance and general old age.



The following data and information help to better understand this situation:

AGE DISTRIBUTION OF BASIC OPERATING FACILITIES  
OF THE ST. LOUIS PUBLIC SCHOOLS

Period of Basic Construction	Age Range	Approx. Building Area	Approx. % of Total
Prior to the turn of the century	83 to 112 yrs. old (17 bldgs.)	845,000	9%
Between 1900-1908	75 to 83 yrs. old (22 bldgs.)	1,434,000	15%
Between 1908-1918	65 to 75 yrs. old (20 bldgs.)	1,646,000	19%
Between 1918-1933	50 to 65 yrs. old (31 bldgs.)	2,516,000	26%
Between 1933-1948	35 to 50 yrs. old (13 bldgs.)	681,000	6%
Between 1948-1967	16 to 35 yrs. old (39 bldgs.)	2,238,000	24%

Most notably, the data show that:

Nearly  $\frac{1}{4}$  of the building area of the St. Louis Board of Education is over 75 years old. Note: This building area alone compares to the total district building area of some of the largest and newest metropolitan area County districts.

Nearly  $\frac{1}{2}$  of the building area of the St. Louis Board of Education is over 65 years old.

More than  $\frac{2}{3}$  of the building area of the St. Louis Board of Education is over 50 years old.

Moreover, nearly  $\frac{1}{10}$  of the building area of the St. Louis Board of Education was built before the turn of the century with four basic facilities over 100 years old.

During the past several years a relatively small amount of money has been devoted to maintenance and improvements of the St. Louis Board of Education's aging school facilities. Each year the Board of Education has been faced with the budgetary task of allocating very limited revenues to a virtual myriad of needs, the cost of which invariably exceeded its funding capacities. Consequently, only critical priorities were funded and numerous critical needs, including facilities, were not met.

This situation ultimately resulted in a facilities needs funding pattern which has degenerated to a critical-only allocation pattern with the deferment of huge amounts of much needed building maintenance and improvements. This condition, in turn, compounded the need for facilities maintenance. Such items as deferred roofing and/or weatherization repairs and replacements resulted in not only a need to correct defective roofs, guttering, and tuckpointing, but also a need to repair or replace substantial portions of interior ceilings, fixtures, equipment, walls, floor finishes and materials damaged by prolonged weather penetration. Deferred maintenance not only required the necessary painting of windows, doors, exterior fences and apparatus, but also has resulted in a need for major repairs and the replacement of all or substantial portions of these items due to their rotting and deterioration from excessive periods between paint coatings.

The above problem became so acute that in early 1980 a proposed Bond Issue was developed, based on the City Board's, then current, no tax increase bonding capacity. This Bond Issue identified in excess of \$30 million dollars needed to initiate a program for addressing deferred maintenance problems as well as limited improvements, renovations, and energy conservation measures. This program was not initiated for a variety of reasons including the implementation of the Intra-City Court-ordered Desegregation Plan.

In early 1982, a 20 million dollar, no tax increase, deferred maintenance only Bond Issue was developed. This Bond Issue received a simple majority but failed because of the  $\frac{2}{3}$  majority vote required.

It is important to note that \$10+ million dollars in facilities needs did not disappear in the two-year period between 1980 and 1982. To the contrary, the needs have become more acute due to the further deteriorated condition of the City Board's aging schools. This is particularly true for regular K-5 and secondary schools which received relatively small amounts of facilities fund allocations due to the overriding priorities established for middle schools and magnet schools under the desegregation plan. Further, the \$20 million dollar need level was again based upon that limit of bonding capacity wherein bonds could be retired with no tax increase to the public.

#### SUMMARY CONCLUSION REGARDING THE GENERAL CONDITIONS OF ST. LOUIS PUBLIC SCHOOL FACILITIES

*The aged facilities of the St. Louis Board of Education are currently in a severely deteriorated and sometimes dilapidated physical condition and are in immediate need of not only a major deferred maintenance program, but also a general improvement, renovation and modernization program.*

#### IMPROVED QUALITY OF EDUCATION

##### (Facilities Improvement Relationship)

Some assumptions and conclusions relative to the new Voluntary Desegregation Plan follow:

1. There is a need for a practical level of comparable school facilities among participating school districts.
2. All learning takes place in an environment of some kind. Every effort should be made to ensure

a learning environment which complements and supports the instructional program in a manner which optimizes the learning process. This is accomplished through the provision of buildings and grounds which are safe, clean, attractive, clement, healthful, efficient, and functional in terms of the current technology and program requirements.

3. School facilities which are not safe, clean, attractive, clement, healthful, efficient, and functional, provide distractions which inhibit the learning process. Consequently, steps need to be taken to remove such inhibitors in order to provide a milieu in which the student is free to concentrate on learning and developmental tasks and the teacher has at hand an appropriately designed and furnished space and the resources which contribute most effectively to the learning process.

If these assumptions and conclusions are correct, then, in view of the general condition of the facilities of the St. Louis Board of Education, it becomes imperative that the City Board obtain sufficient funds not only to provide for deferred maintenance but also to initiate a comprehensive program of general renovations, associated program improvements, and modernization of its facilities. While it may be impractical to expect total facilities comparability at the extremes of participating districts' facilities conditions, it would be improper to infer that comparability or quality of facilities can be accomplished via a coat of paint.

#### *Program Description*

After reviewing the various elements of the settlement plan, the City Board proposed that funding be made available to implement a comprehensive program which addresses deferred maintenance and provides for the renovation, modernization, and improvement of its facilities. This proposed program:

1. Provides for facilities modifications, renovations, and improvements associated with the educational program needs described in Sections A and B.
2. Includes and interfaces all deferred maintenance needs previously identified in the 20 and 30 million dollar Bond Issue proposals.
3. Includes energy conservation building modifications as previously identified in the 30 million dollar Bond Issue. These modifications are more critical under the New Voluntary Plan than they were three years ago because of the continually escalating high cost of energy and increased energy demand created by the types of program components contained within the new Voluntary Plan, i.e., various school laboratories and spaces will consume proportionately more energy.
4. Includes the general improvement of fire and life safety building components to more closely comply with modern building code provisions for fire safety and protection.
5. Includes mechanical and electrical equipment modifications designed to meet more modern standards of health, efficiency, and an improved learning environment.
6. Takes into account the improvements and renovations provided under funding allocations received since the implementation of the Intra-City Desegregation Plan.
7. Does not provide for new educational program furniture or equipment needs.
8. Does not provide for building additions, new buildings, the reopening of currently closed facilities, or the total rearrangement of existing facilities. For these and similar added needs items, see 9.03 and 9.04 plus Section C.

9. Assumes, in general, that enrollment reductions through transfers of City students to County districts will, for a significant period of time, be offset by reduced student/teacher ratios. Note: At the onset of the new plan, a situation may occur which demands an initial increase in classrooms if substantially reduced student/teacher ratios are not offset by student transfers out of the City Schools.
10. Does not provide for in-house, day-to-day maintenance and emergency repair needs and assumes the City Board will continue to fund this activity at its current critical only level; but acknowledges in this segment that an increase of the Board's current maintenance staff will supplement and directly support this facilities' renovation, modernization and improvements program, particularly as it relates to major deferred maintenance components.

This program will result in the majority of facilities expenditures in non-integrated schools by virtue of the relative age and percentage of building area within these facilities as well as the various educational components and their associated building modifications requirements in such schools.

The completion of this program should not be attempted within the scope of the five-year plan. This is of such scope with respect to planning, organization and implementation that it cannot be efficiently completed in five years. It is suggested that a minimum eight-year period be utilized.

#### ESTIMATED COST AND COST BASIS OF SUGGESTED FACILITIES IMPROVEMENT PROGRAM

To determine the estimated cost of this program, a building renovation and modernization cost per-square-foot estimating technique was used. Based on various



conditions, numerous variables, and professional judgement, it is believed that the degree of accuracy of this facilities program cost estimate is approximately within a 10% (+—) error factor.

The cost estimating process involved various factors and considerations, most notably the following:

- A. New construction of school buildings in this metropolitan area is estimated between \$48 to \$58 per square foot exclusive of site acquisition or development costs. This is based on local professional judgement as well as various national building valuation and construction cost index listings.
- B. Major renovations and modernization of school buildings and similar structures over 75 years of age is currently about half of new school building costs (this is highly dependent on the general condition of the building, especially the buildings' mechanical and electrical systems). This is based on professional rehabilitation experience, general construction estimating experience, as well as the City Board's most recent experience regarding the extensive modernization and renovation of the Marquette School wherein its basic renovation, improvements, and modernization costs were slightly in excess of \$26 per square foot. While it is true that the condition of the Marquette was below even buildings of the oldest St. Louis School vintage, it is also true that a relatively small amount of money was spent upgrading and modernizing this facility's mechanical systems. Further, nearly all other elements of this upgrading were consistent with the types of modernization, renovations, and improvements which are considered necessary for a structure of this age.

The above, together with other factors and professional design judgments, resulted in the identification of the following facilities needs by age-range of basic building stock:

Estimated Facilities Need Level	Age Range	Approximate Quantity of Basic Bldg. Area
I. Limited Intensity/ Renovation/and Improvements	16 to 35 Years (39 bldgs.)	2,238,000
	36 to 50 Years (13 bldgs.)	681,000
II. Moderate Intensity Renovation and Improvement	50 to 65 Years (31 bldgs.)	2,516,000
	65 to 75 years (20 bldgs.)	1,763,000
III. Substantial Renova- tions and Impro- ments	75 to 83 years (22 bldgs.)	1,434,000
	83 to 112 years (17 bldgs.)	845,000

Five-Year Facilities Improvement Schedule—A description of work emphasis for Phases I through V follows:\*

	Description of Process Work Emphasis
Phase I. 1983-84	Organizational planning and restaffing year with heavy emphasis on renovations to include deferred maintenance, low level modernization and program related improvements.
Phase II. 1984-85	Primary emphasis, general renovations to include deferred maintenance, intermediate level modernization and program related improvements plus year-end re-evaluation of overall program needs.
Phase III. 1985-86	Approximately the same emphasis on renovations to include deferred maintenance, modernization and program related improvements.
Phase IV. 1986-87	Intermediate emphasis on general renovations to include deferred maintenance. Intermediate emphasis on modernization and program related improvements.
Phase V. 1987-88	Heavy emphasis on modernization and program related improvements. Moderate emphasis on general renovations to include deferred maintenance.

\* As noted above, a minimum eight-year implementation period for this facilities component should be considered and on-going

## 9.02 Personnel and Resources Necessary to Implement Program for Deferred Maintenance, Renovation and Improvements

### *The Need*

There is a need to increase the capabilities of the City Board's Administrative Support Services to implement the deferred maintenance and building improvement program described in the preceeding section. This program will place greater demands on the central office Clerical and Administrative Support Unit, the Facilities Operations Unit (Custodial and Groundskeeping), the Building Maintenance and Repairs Division, and Central Printing and Duplication.

### *Program Description*

The central office provides services directly related to building improvements, renovations, and modernization contracts through the preparation of written specifications and contract documents, the process of bid letting, monitoring and accounting, verification of payments, the printing of specifications, contracts and forms used in such contract processes, as well as general administration and supervision of overall contract processes as provided by state statutes and the rules and regulations of the St. Louis Board of Education. Additional clerical staff will be needed to address the increased workload.

Custodial services must be upgraded to meet the additional demands of the facilities improvement services. Some additional staff will be needed.

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needs beyond the eight years should also be funded. It is anticipated that work emphasis for 1988-89 would be about the same as in Phase IV and V, and in 1990-91 as in Phase V. Additional cost factors would be projected accordingly, with work beyond the eight (8) year period based on ongoing facilities' repairs and improvement needs.

Further, the function of Central Printing and Duplicating Section of the Central Office will also be impacted. This shop will be affected by the activities of curriculum development, school level planning, expansion of remediation programs, the restoration of library services, strengthening of school-parent-community communication and involvement, and the strengthening of public affairs and other service units. Additional staff will be required.

The Groundskeeping Division has been continually reduced in staff over the past several years and additional reductions were made during the current budgetary crisis. This division directly supports the facilities improvement program. All dollars expended by this division in the area of groundskeeping, maintenance repairs, etc., has the effect of delaying or reducing the need for major deferred maintenance or renovations. For example, the Groundskeeping Division provides surface sealcoating protection for paved areas of the St. Louis Public Schools. This sealcoating preserves and extends the life of paved areas. Additional staff will be required.

The Building Maintenance and Repairs Division provides emergency and on-going repair services for the City Board's facilities and would be expected to perform key services in the program to address deferred maintenance problems. This past year, however, 59 trades maintenance mechanics positions were lost due to budgetary cutbacks. Such trades mechanics are essential to the facilities improvement program.

### 9.03 Facilities Related Needs Which are Beyond the Scope of Work Identified in 9.01 and 9.02

#### *The Need*

It appears imperative that the City Board plan for the reopening of a substantial portion of the building area which was closed during recent years to provide for the

initial impact of various new educational components and support staff needs which would be generated by the implementation of this plan.

Insufficient information currently exists to derive a total estimate of the facilities requirements and operational costs for this need. Further, it may become more cost effective in some instances to consider temporary measures such as renting or leasing space, subdividing rooms, etc., during Years I and II pending overall evaluation of the impact of Plan components, particularly those for student transfers. Therefore, it may be necessary to provide additional funds for additional space needs.

The various components listed below have facilities needs beyond the scope of work identified in 9.01 and 9.02.

#### A.3.04 (*Hearing Impaired Preschool*)

This component identifies the need to expand the Gallaudet School for a preschool center to serve hearing impaired students with construction in Phase II and operation in Phase III.

#### (*Early Childhood Special Education Program*)

This component also identifies the need to open a preschool center for special education students other than Hearing Impaired (assumed reopening a closed school). Construction would be completed in Phase I. The program would become operational in Phase II.

#### *Special Education Administration*

This component also identifies a need to construct an addition to the current Special Education Administration Center, 2135 Chouteau with construction in Phase II and III and operation during Phase III.

*Replacement of Michael School*

This component also identifies a need to construct a new facility for the orthopedically handicapped. Construction would occur in Phase III and IV and the building would be used in Phase V.

*A.4.04 Establish an Alternative High School*

This component identifies a need to open a four year alternative high school in Phase II, wherein it is assumed that the related construction will occur during Phase I and the early Phase II period and will be a building of sufficient size to serve approximately 300 high school level students.

*A.5.01 Honors Art and 4th R Gallery*

This component identifies a need for a one-story building addition in Phase III.

*A.5.02 Honors Music Program*

This component identifies a need to provide a facility for the Honors Music Program. It is presently assumed that the building at 721 Pendleton would be reopened and converted into a music center for Phase I.

*A.2.01 Library Services*

This component identifies a need to provide a substantial expansion of the Library Services Center spaces. It is assumed that this need can be provided for by the reopening, renovation, modernization and improvement of the previously closed Library Services Center at 1100 Farrar.



### 9.04 Additional Facilities Needs in Secondary Schools Which are Beyond the Scope of Work Identified in 9.01 through 9.03

#### *The Need*

There are long-standing facilities deficits in certain high schools which must be addressed to insure quality programs. These deficits would be addressed as follows:

1. Build an athletic field with running track for Central High School. This project involves acquisition of 4.5 acres plus Improvements. (Phase III)
2. Building addition for gymnasium and swimming pool at Northwest High School. (Phase IV)
3. Construct a field house with swimming pool for Soldan High School. Assumed location on site near Soldan Athletic Field. (Phase III)
4. Construct a 400 meter track with athletic field for Sumner High School. This project involves the acquisition of 4.5 acres of land, plus improvements. (Phase III)

#### B. Special Provisions for Schools Which Remain Non-Integrated

##### Introduction

The City Board has analyzed the needs of students who would attend schools which remain non-integrated under the settlement plan. Those needs are identified herein and the efforts and programs designed to address those needs are described in this section. Such efforts and programs are designed to provide for further improvements in the quality of education for students who remain in non-integrated settings in the City schools and thus address the inherent inequality of education in a segregated setting.

## 1.0 *Improvements of Staffing for Instruction*

### 1.01. Lower Pupil Teacher Ratios in Non-Integrated Schools

#### *The Need*

There is a need to provide for pupil-teacher ratios in non-integrated schools which *significantly* enhance classroom and instructional management, provide for more "time on learning tasks" and permit teachers to spend a meaningful amount of time working with individual students.

#### *Program Description*

In 1983-84 pupil-teacher ratios would be reduced to the proposed system-wide levels. It is projected that a lack of classroom space in non-integrated schools will permit no further reduction of ratios in that year.

Subsequent to 1983-84, the City proposes to reduce pupil-teacher ratios in non-integrated schools to an interim goal of five students below the proposed system-wide ratios for 1983-84 and to a ratio of 20:1 within five years. This ratio is estimated to be five students below the average for county districts and the proposed ratio for regular integrated schools and magnet schools.

### 1.02 Coordination of Instructional and Motivational Programs in Non-Integrated Schools

#### *The Need*

As desegregation and instructional programs are implemented, each non-integrated school will participate in a number of endeavors directed toward the improvement of instruction. Significant demands will be made on the administration and the instructional staff of each building to alter, change or adopt specific educational strategies which are directed toward the provision of more effective instructional services to minority children. In

order to maximize the results of these efforts, it is proposed that an instructional coordinator be assigned to each non-integrated school.

### *Program Description*

Each non-integrated school would receive an instructional [sic] coordinator to assist the principal and staff members in the implementation of programs available throughout the area. This person would serve as a liaison with the coordinators of the various programs, provide supervision to the ancillary programs, and provide other instructional services to the school as directed by the principal.

## *2.0 Provide for Special Needs of Students*

### *2.01 After-School Programs of a Remedial and Enriching Nature*

#### *The Need*

There is a need to provide supplemental remedial and enrichment educational programs for students who remain in non-integrated schools. An after-school program component would address those needs.

### *Program Description*

After-school programs will be available to all pupils enrolled in the non-integrated schools. These programs will have two objectives: (1) to address the need for remedial and/or supplementary instruction in basic subject areas addressed by the curriculum and (2) to provide pupils with the opportunity to participate in specific supplemental academic and non-academic activities designed to increase the experiential base on which pupils build their academic learning. For example, structured field experiences could assist pupils in science, geography, mathematics, and other disciplines. Experiences with video, radio and television activities could be extremely effective in providing support to the language arts curriculum.

Many other examples could be cited regarding various activities which could be utilized to strengthen the skills of young people without presenting what would generally be considered as a continuation of "the same old thing." Programs would serve grades one through twelve.

2.02 Saturday Classes for All Pupils—the Learning is Fun, Today! (L. I. F. T.) Program.

*The Need*

There is a need for additional intensive instruction in reading and mathematics and other skill focused subject areas to ensure that all students receive sufficient assistance to achieve a basic level of competency. Those who have acquired the basic skills often need additional help in maintaining and strengthening their mastery of each skill. The Saturday Classes are designed to address these needs.

*Program Description*

Saturday classes will be available to all pupils enrolled in non-integrated schools. These programs will be designed to supplement the regular curriculum and provide appropriate educational experiences to pupils who require additional learning experiences or who need individual attention. The programs will be linked to the current Comprehensive Competency Based Educational Program which is designed to assure that all pupils attain minimum benchmark standards in reading and mathematics. Pupils who have not achieved the standards will be provided appropriate remedial experiences, while pupils who have successfully acquired the requisite skills will be offered a number of activities to strengthen their mastery of the concepts and receive a strong skill-focused supplement to the regular curriculum. Programs will be developed to provide assistance to youngsters who have not passed the BEST test.

## 2.03 Summer Educational Experiences—The S.E.E. Program

### *The Need*

There is a need to provide supplemental instructional programs for students who complete a course of study but who have not achieved a level of competency sufficient to permit them to benefit optimally from the course of study at the next grade level. The Summer Educational Experiences Program is designed to address this need.

### *Program Description*

Summer Educational Experiences will be available to all pupils (1-12) enrolled in non-integrated schools. These classes will assist pupils who have not been completely successful during the school year and who have been identified by the regular classroom teacher as likely to benefit by additional focused instruction in basic skills or other academic areas. Classes will not exceed fifteen pupils, and individualized programs of instruction will be developed for each pupil through the cooperation of the classroom teacher from the previous year, the summer school teacher, a specialist in learning methods, and the parents. Materials from the regular reading and math programs will be utilized in order to assure the mastery of skills requisite for the grade level which the pupil will begin in the fall. However, where appropriate, additional supplemental materials which provide a self-paced learning program will be used to develop the skills which are emphasized in the regular program.

## 2.04 Schools of Emphasis

### *The Need*

Many black students, for one reason or another, will not be able to enroll in a magnet school or transfer to a County school but may still wish to participate in alternative instructional programs or pursue special educa-

tional interests on an intensive basis. Additionally, the staffs of non-integrated schools need sufficient resources to address the special needs of their students in a systematic fashion. The Schools of Emphasis Program is designed to address these needs.

### *Program Description*

All non-integrated schools will be given the opportunity to develop programs of special academic emphasis which will be integrated with the regular curricular offerings at these sites. Programs such as career examination, creative writing, reading for critical analyses, practical math applications, or other programs may be selected based upon a needs assessment and student interest.

### *Implementation*

The 1983-84 school year will be a planning year for the Schools of Emphasis Program. Resources will be provided for each non-integrated school to conduct needs assessments, planning sessions, and other activities related to comprehensive educational planning.

## 2.05 Parents as Teachers

### *The Need*

Research and studies in early childhood education have indicated a need to involve parents in significant ways during the early stages of their children's education. It has been found that pre-school age children growing up in urban areas often lack the skills and development which ensure readiness for formal learning experiences. When such children are old enough to begin their formal school training, precious time must be spent on developing those skills that children in more affluent areas have already acquired. The result of these deficits is that children often remain a level or two behind the more affluent child. There is a need to assist parents of chil-



dren in kindergarten through grade three in acquiring the skills to help their children to profit fully from their educational experiences.

### *Program Description*

A Parents as Teachers Program will be implemented in non-integrated schools to prepare parents to tutor their children. This program will focus on the benefits to be attained through the cooperation and involvement of the parent in the education of the child. One component of the program will build on the experiences gained in the current pre-school programs and the expertise available in the metropolitan area regarding pre-kindergarten programs for four-year-old children. A major emphasis will be on the involvement of the parent in the program as an instructional partner. Parents will be provided with information regarding the physical, social, emotional and academic development of children. Administrative assistance for this program will be provided in part by staff of the systemwide parent involvement program. (A. 8.05)

### *Implementation*

This program would begin with the involvement of parents of kindergarten children in 1983-84 and would be extended one grade per year through grade three in subsequent years.

## 2.06 Peer Tutoring

### *The Need*

Pupils who have not successfully mastered skills presented by classroom teachers require individual attention. There is a need to provide role modeling from older children by assisting other pupils in acquiring academic, study and social skills. The Peer Tutoring Program would address these needs.

*Program Description*

Older pupils will serve as tutors to younger children who are having difficulty in basic skill areas. Teachers will set aside time during the day for tutoring sessions.

2.07 Motivational/Recognition Experiences Program M. E. R. R. Y. (Motivational Experiences and Reward for Excellence in Youth)

*The Need*

There is a need to provide students with frequent opportunities to gain recognition and success. Such opportunities should be structured in a manner which motivates students to strive for a higher level of achievement. The Motivational Recognition Experiences Program will address this specific area of need in non-integrated schools.

*Program Description*

The Motivational/Recognition Experiences component will provide a number of activities which will make available to pupils opportunities for success and recognition. Such activities as writing contests, debates, math competitions, science expositions and others will have motivational effects on students by providing numerous opportunities for them to receive recognition for participation and achievement. The activities would be scheduled throughout the year and would be coordinated with the curriculum to ensure that pupils receive maximum benefits from participation. Activities would be scheduled for pupils in grades kindergarten through grade 12.

2.08 Role Model Experiences

*The Need*

There is a need to provide students in non-integrated schools with successful role models as a means of moti-

vating them to continue their schooling and develop high expectations for themselves. The Role Model Experiences Program would address this important need.

### *Program Description*

Students in non-integrated schools will be provided with successful role models to encourage them to seriously continue their education. Assembly programs and other large group activities, and classroom experiences with local, state and national figures will be arranged. These experiences will be coordinated with curricular materials in such a manner as to support the regular instructional program. Actual contacts with successful role models will encourage academic achievement, particularly in social studies and other areas which address current events.

### *3.0 Parent-Student-School Relations*

#### *3.01 Parent and Staff Seminars—P.A.S.S. Program*

##### *The Need*

There is a need to build a stronger, mutually supportive relationship between parents and the school. This relationship must be based upon a mutual understanding of the parent's expectations for the school and the school's educational objectives. A program of Parent and Staff Seminars would address this critical need.

### *Program Description*

A series of monthly seminars will be established in non-integrated schools to provide information to parents regarding the programs of the schools, the initiatives of the system, the priorities of the classroom teacher, and other information related to the functioning of the school district and to hear from parents their expectations for the school. Particular emphasis will be placed on the academic program of each school and the expectations

which the teachers and principals have of the pupils. Information will be provided parents regarding the progress of their children and the academic activities in which they participate. This should enable parents and schools to cooperate in order to address the needs of the pupils more effectively. Further, parents will be given an opportunity to informally interact with staff members and address concerns which they may have regarding the programs of the school and of the district. Representatives of various divisions throughout the system will be invited to follow-up meetings in order to provide further information to the community. Administrative support for this program will be provided by the staff of the system-wide component "Strengthen School-Parent-Community Communication and Involvement." (A.8.05)

### 3.02 Shared Experiences Program—Student Concerns Committees

#### *The Need*

There is a need to involve students in a systematic way in the resolution of issues which affect the quality of life in their schools. The involvement of students in efforts to improve student attendance and behavior, student-teacher relations and school climate can address the need for students to achieve a sense of belonging and a sense of responsibility for matters which affect their education. Student Concerns Committees will be established to address these needs.

#### *Program Description*

Provisions will be made for the establishment of student concerns committees in each elementary and middle school. These committees of student representatives will meet regularly with the principal and will address such issues as student morale, attendance and behavior. Members will participate with staff in efforts to create a school climate which is conducive to the maintenance of an effective learning program.

### C. Development of Program Specifically for the Inter-district Plan

#### Introduction

Consistent with the terms of the Agreement in Principle regarding the expansion of magnet school opportunities, the City Board sets forth herein the measures it would take to meet the terms of the agreement. The City Board's expansion of magnet schools and programs over the next several years would increase the number of magnet school enrollment opportunities from some 7,000 at present to approximately 14,000 when the phased expansion is complete.

On the following pages, the City Board lists the magnet schools which are operating during 1982-83, those which are scheduled to operate in 1983-84, and those which are projected to be expanded or newly created for the 1984-85 school year. Additionally, two magnet school support programs are proposed and described. They are the Magnet School Curriculum Development Unit and the Ethnic Heritage Program.

Finally, the City Board anticipates that all of its 12(a) Plan programs will continue to operate under the settlement plan. Therefore, 1983-84 budgets are provided for these programs. Budgets are also included for estimated site preparation costs which must be met in 1983-84 for magnet schools which are scheduled to become operational for the 1984-85 school year.

# 303a

## 1.0 Synopsis of Magnets By Year

### 1.01 MAGNETS EXISTING

#### IN

1982-83

	Grade	Target Enroll
Academic and Athletic Academy	6-8	175
*Academy of Basic Instruction I	K-8	310
Academy of Basic Instruction II	K-8	345
Academy of Basic Instruction III	K-8	410
Academy of Mathematics & Science	9-12	450
Action Learning/Career Exploration	K-8	455
Center for Business, Management & Finance	11-12	300
Center for Expressive and Receptive Arts	K-8	456
Classical Academy (Soldan)	9-12	150
Classical Junior Academy	2-8	549
Foreign Language Experience School	K-8	275
Health Careers	11-12	250
IGE I	K-8	415
*IGE II	K-8	450
Investigative Learning Center	K-5	415
*Investigative Learning Middle	6-8	315
Mass Media (McKinley)	9-12	200
Metro High School	9-12	240
Montessori	K-8	250
Naval Junior ROTC	9-11	350
Visual and Performing Arts Center	K-5	455
*Visual and Performing Middle	6-8	315
Visual and Performing Arts High	9-12	550

\*Under Present (12a) Voluntary Plan—1982-83



# 304a

## 1.02 FIRST PHASE MAGNET SCHOOLS 1983-84 CURRENT SCHOOLS AND PROPOSED CHANGES

	Grade	Target Enroll
Academic and Athletic Academy	6-8	175
*Academy of Basic Instruction I	K-8	310
Academy of Basic Instruction II	K-8	345
Academy of Basic Instruction III	K-8	410
*Academy of Mathematics, Science and Applied Technology	9-12 (expanded focus)	475
Action Learning/Career Exploration	K-8	450
Center for Expressive and Receptive Arts	K-3	450
Classical Academy (Soldan)	9-12	150
Classical Junior Academy	2-8	549
*Foreign Language (Roosevelt)	9-12 (New School)	450
Foreign Language Experience School	K-8	275
Health Careers	11-12	300
Individually Guided Ed I	K-8	415
*Individually Guided Ed II	K-8	450
Investigative Learning Center	K-5	415
*Investigative Learning Middle Management Academy	6-8 11-12 (Expanded Focus)	315 300
Mass Media (McKinley)	9-12	200
Metro High School	9-12	240
Montessori	Pre-School-3 (expanded focus)	350
Naval Junior ROTC	9-11	400
Visual and Performing Arts Center	K-5	485
*Visual and Performing Middle	6-8	315
Visual and Performing Arts High	9-12	550

\* Identified as Voluntary Plan Schools

1.03 1984-85

## ADDITIONS TO THE VOLUNTARY PLAN

	Grade	Target Enroll
*Foreign Language Experience School II	K-8 (replication)	275
Individually Guided Education I	K-5 (conversion)	415
*Individually Guided Education II	K-5 (conversion)	450
*Individually Guided Middle II	6-8 (new school)	500
*Military Academy Middle	6-8 (new school)	400
*Montessori II	Pre-school-3 (replication)	400
*Naval Junior ROTC	9-12 (relocation)	1,000
*Visual and Performing Arts Middle	6-8 (replication)	315
*Visual and Performing Arts High	9-12 (relocation)	1,000

\* Identified as Voluntary Plan Schools

2.0 *Magnet and Inter-District Support Units*

## 2.01 Curriculum Development Need

*The Need*

There is a need to provide in-service training for present magnet school staff in the specialty of their schools; there is a need to provide principals with released time to plan curriculum, identify needs related to site selection, building modification and furnishings for new magnet schools; there is a need [———] in-service staff of new magnet schools; and there is a need for staff to coordinate magnet school planning, in-service and instructional assistance.

*Program Description*

Three components will be implemented. (1) Principals of new magnet schools or their designates, will be given at least one year's time to plan for the opening of their schools (2) In-service will be provided for all present staff and staff of proposed magnet schools in order to train them in the specialty of their school. (3) Staff will be provided to coordinate the above activities as well as to provide on going planning and instructional assistance to all magnet school staffs.

## 2.02 Ethnic Heritage Program

### *The Need*

Under the interdistrict plan, new magnet schools will be created. In addition to providing improved specialized education programs for St. Louis students, these schools are expected to attract several thousand voluntary transfer students from St. Louis County. These students will be attending school in an integrated setting many of them for the first time. Efforts of the school districts to reduce racial isolation, even under a voluntary plan, resulted in some degree of tension and anxiety. There is a need for each teacher to acquire the knowledge of students' ethnic and cultural backgrounds. There is also a need for each teacher to employ strategies and techniques in the classroom which will benefit all students and develop an atmosphere in which desegregation can succeed, minority isolation can be reduced, and student achievement can be enhanced.

### *Program Description*

The ethnic Heritage Program will be provided in grades K-12 in the magnet schools established under the intra-district desegregation plan and the additional schools under the new interdistrict plan that will be phased in over the next five years. The Ethnic Heritage program will present a variety of ethnic subject matter, allowing students to internalize the cultural complexity and interdependence of all groups within our society. Multicultural activities will be used in the development of fundamental competencies such as reading, writing, arithmetic and reasoning as well as conceptual skills specific to different disciplines. Basic skills will be expanded from the purely cognitive, and will include intercultural communication, values formation, decision making and social participation. Ethnic-specific learning activities and classroom materials will be integrated through the basic educational program.



MAY 18 1984

ALEXANDER L. STEVANS,  
CLERK

**No. 83-1721**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

STATE OF MISSOURI, et al.,  
*Petitioners,*

vs.

CRATON LIDDELL, et al.,  
*Respondents.*

**BRIEF FOR RESPONDENT CITY OF ST. LOUIS  
IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

**I. WHETHER THE WRIT SHOULD BE GRANTED BECAUSE THE SCOPE OF THE REMEDY ORDERED BY THE DISTRICT COURT AND AFFIRMED BY THE COURT OF APPEALS GROSSLY EXCEEDS THE EXTENT AND SCOPE OF THE CONSTITUTIONAL VIOLATION FOUND TO HAVE OCCURRED.**

**II. WHETHER THE PETITION SHOULD BE GRANTED BECAUSE THE COURT'S ORDER REQUIRING THE STATE OF MISSOURI AND CITY TAXPAYERS TO FUND CAPITAL IMPROVEMENT PROJECTS FOR THE CITY BOARD IS IMPROPER IN THAT THOSE PROJECTS WOULD UPGRADE THE SYSTEM IN WAYS ONLY REMOTELY RELATED TO DESEGREGATION, AND WILL ENTAIL UNCONSTITUTIONAL JUDICIAL TAXATION OF THE PEOPLE OF THE CITY OF ST. LOUIS.**





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CRATON LIDDELL, et al.,  
*Respondents.*

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**BRIEF FOR RESPONDENT CITY OF ST. LOUIS  
IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI**

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**STATEMENT OF THE CASE**

The City of St. Louis presents this brief in Support of the Petition for Certiorari filed by the State of Missouri. City of St. Louis wholly accepts the statement of the case presented by Petitioner State of Missouri.

The City of St. Louis would like to point out to this Court the fact that the City of St. Louis is not identical to the St. Louis Board of Education. These two are completely independent entities. The Board of Education is in no way financially dependent on the City of St. Louis. Judge Gibson's dissent opinion in *Liddell v. Missouri*, No. 83-1957, Order Feb. 8, 1984 at p. 76, appears to refer to the City of St. Louis as a constitutional violator. The City of St. Louis has never been found to be a

constitutional violator; in fact, City of St. Louis has been a plaintiff-intervenor in the desegregation proceedings. The reference made by Judge Gibson was to the St. Louis Board of Education, which was found to be a constitutional violator along with the State of Missouri by the Eighth Circuit in *Adams v. U.S.*, 620 F.2d 1277 (1980).

### **REASONS FOR GRANTING THE WRIT**

The State of Missouri has presented its argument in support of certiorari in its Petition. Three foci are found in that argument: (1) the lack of findings made by the district court to support the remedy it imposed; (2) the lack of correspondence between the remedy imposed and the constitutional violation found to have occurred; and (3) the improper interference by the district court with state decision-making. Because the lower courts and the drafters of the settlement at issue here have deliberately sought judicial taxation, and because of the nature and magnitude of the remedy ordered by the district court, the City of St. Louis is compelled to state the following in support of the State of Missouri's Petition for Writ of Certiorari.

#### **I. The Writ Should Be Granted Because The Scope Of The Remedy Ordered By The District Court And Affirmed By The Court Of Appeals Grossly Exceeds The Extent And Scope Of The Constitutional Violation Found To Have Occurred.**

In 1980, the Eighth Circuit Court of Appeals reversed the district court and found the State of Missouri and the St. Louis Board of Education to have perpetuated discriminatory practices in public education. *Adams v. U.S.*, 620 F.2d 1277 (8th Cir. 1980). The Court found that although the Board had initiated various reforms following the *Brown v. Board of Education*, 347 U.S. 483 (1954) decision, those had failed to disestablish the dual school system in the City of St. Louis prescribed under Missouri law before 1954. *Adams*, at 1285-86. The Court concluded its analysis of the factual situation by

stating that it would require a “system-wide remedy for what is clearly a system-wide violation.” *Adams*, at 1291.

What is vitally important in the Eighth Circuit’s opinion in *Adams* is the court’s discussion of the discriminatory practices of the suburban St. Louis school districts. The litigation at this stage did not involve the suburban districts as parties, yet the Court pointed out in footnote 27, that there was collaboration among the various districts and the Board of Education to perpetuate segregation in the school systems. The purpose of footnote 27 is apparent to even the most casual reader: if necessary, the Eighth Circuit would find the suburban districts constitutional co-violators to justify ordering an interdistrict remedy to alleviate the effects of past discrimination.

The Eighth Circuit invited the initiation of interdistrict proceedings by its “findings” presented in footnote 27 in *Adams*. On remand, the district court included the interdistrict approach and as a result of its orders, interdistrict litigation began. Various suburban school districts as well as St. Louis county and county officials were added as defendants. The Board was allowed to realign itself as a plaintiff.

Being fully aware of the liability found in the intradistrict phase and the remedy imposed with its attached price tag, the suburban districts agreed to settle the interdistrict litigation with the Board and other plaintiffs. The State of Missouri, City of St. Louis and United States refused to agree with the proposed settlement. When the time came for specifying the financing of the settlement provisions, the district court focused on the State of Missouri and the City Board to bear the burden. The court opined that the “primary responsibility for funding the Settlement Plan rests with those parties who have been adjudicated as liable under the Constitution for segregated conditions within the City’s public schools.” *Liddell v. Board of Education of City of St. Louis*, 567 F.Supp. 1037, 1051-52 (E.D.Mo. 1983). Despite footnote 27 in *Adams*, mentioned earlier, the district



court failed to identify the suburban districts as constitutional violators. Moreover, those suburban districts accomplished the *coup de grace* by avoiding all responsibility for financing the interdistrict remedy while at the same time insulating themselves from any future liability for their past discriminatory practices. What is even more astounding is the lack of any proper findings to support the interdistrict remedy.

It is axiomatic that the scope of any remedy must be tailored to the wrong committed. *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375 (1982). In the context of school desegregation law the remedy must fit the "nature and extent of the constitutional violation." *Milliken v. Bradley*, 418 U.S. 717, 744 (1974) (Milliken I). Once a constitutional violation has been identified, the court's remedial powers are broad and flexible. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). The corollary of the above principle must not be overlooked: in the absence of a constitutional violation a judicially imposed remedy is inappropriate. *Milliken v. Bradley*, 433 U.S. 267 (1977) (Milliken II).

The Eighth Circuit affirmed the interdistrict plan essentially by relying on *Hills v. Gautreaux*, 425 U.S. 284 (1976). In *Hills*, HUD was found to have performed certain unconstitutional discriminatory acts in the City of Chicago. The remedy imposed by that Court focused on requiring HUD to provide housing in other parts of the metropolitan Chicago area. The Court noted that the disruptive effect of the interdistrict plan would be minimal since HUD's administrative area was actually the metropolitan Chicago area rather than merely the City of Chicago. Additionally, the remedy would not interfere with any local governments since the HUD Chicago area was administered as a unitary system.

Although the decision in *Hills* can be characterized as an interdistrict remedy it clearly was not so considered by the Supreme Court. In legitimizing its decision, the Court explain-

ed that the order was proper because there was really only one administrative unit affected - the HUD metropolitan Chicago area. The Court was quick to note that the order would not "entail coercion of uninvolved governmental units, because both CHA [Chicago Housing Authority] and HUD have the authority to operate outside Chicago city limits." (footnote omitted) at 299. In distinguishing its order from the impermissible interdistrict remedy imposed in *Milliken I*, the *Hills* court pointed out that the *Milliken* court had not found the school districts to be constitutional violators. Moreover, the remedy in *Milliken* would have "abrogated the rights and powers of the suburban school districts under Michigan Law." *Hills*, at 299, n. 13.

The Eighth Circuit's reliance on *Hills* is misplaced for several reasons. First, there has never been a specific finding that the suburban St. Louis school districts committed discriminatory practices in violation of the constitution or that the State of Missouri is responsible for constitutionally violative segregation in the suburban school districts. Second, there have been no findings specifying significant segregative effects of State action in the suburban districts. Third, the school districts of the City of St. Louis and the suburban communities are independent systems wholly unlike HUD's administrative area referred to as the "Chicago housing market." Fourth, the interdistrict plan clearly interferes with local governments which have not been found to be constitutional violators, particularly the City of St. Louis which will lose revenue as a direct result of judicial taxation contemplated by the settlement at issue here.

The mandate found consistently in the progeny of *Brown v. Board of Education*, 347 U.S. 483 (1954) is patent: absent findings of constitutional violations in the suburban districts, or segregative effects of those districts in the City of St. Louis, the interdistrict remedy imposed is inappropriate. *Swann*, *Milliken I*, *Evans v. Buchanan*, 582 F.2d 750, 756 (3rd Cir. 1978), cert. denied 446 U.S. 923 (1980); *Columbus Board of Ed. v. Penick*, 443 U.S. 449 (1979).

**II. The Petition Should Be Granted Because The Court's Order Requiring The State Of Missouri And City Taxpayers To Fund Capital Improvement Projects For The City Board Is Improper In That Those Projects Would Upgrade The System In Ways Only Remotely Related To Desegregation, And Will Entail Unconstitutional Judicial Taxation Of The People Of The City Of St. Louis.**

The district court imposed on the State of Missouri and the taxpayers of the City of St. Louis the burden of financing massive general improvements in the St. Louis school district. The State objects to the order because it includes no guidelines for assessing the state's responsibilities in terms of any constitutional violations. There are no findings by the district court that any discriminatory practices led to inferior buildings and facilities in the school district of the City of St. Louis. Indeed, any such finding would be totally unsupported by the facts. As the district court found in 1979, the age of facilities in the City School Board's system was not related to the race of students attending them. Indeed, many newer facilities were located in predominantly black areas of the City. *Liddell v. Board of Education*, 469 F.Supp. 1304, 1339 (E.D.Mo. 1979).

The orders of the district court, affirmed by the Eighth Circuit, requiring the State of Missouri to fund various capital improvements in the St. Louis school system are improper. The findings made by the district court in *Liddell*, expressly counter any proposition that improvements were made discriminatorily. In fact, in those findings, the Court enumerated the numbers and types of facilities provided and their locations. *Liddell*, at 1338-1344. The court found that "[c]harges of intentional containment in connection with the Board's construction policy are without merit." at 1340 (footnote omitted). The court pointed out much of the new construction between 1954 and 1972 occurred in areas of the City with a predominantly black population. Unlike the findings concerning student assignment policies and faculty and administrator segregation, the findings concerning

capital improvements were never overturned by the court of appeals. See *Adams v. U.S.*, 620 F.2d 1277, 1288-1291 (8th Cir. 1980).

Despite the findings of the district court in 1979, the inter-district settlement plan included provisions specifying major capital improvements to be made by the St. Louis Board of Education with funding by the State of Missouri. In order to be a proper remedy in a desegregation case, the capital improvements ordered *must not go "beyond eliminating unconstitutional desegregation."* *Morgan v. McKeigue*, 726 F.2d 33, 34 (1st Cir. 1984) citing *Swann*, 402 U.S. at 16. (Emphasis added.) What is obvious is that the district court and the Eighth Circuit would like to transform the St. Louis school district into a model system, attracting suburban white students, at great expense to the people of the City and to the State, so that some form of racial ratio satisfactory to the court of appeals is achieved. Although the courts pay lip service to the fact that there is no constitutional right to public education, they proceed to order the state to pay for improvements in quality of education in St. Louis. These orders directly contradict case law on the subject. In *Arthur v. Nyquist*, 712 F.2d 809 (2d Cir. 1983), cert. denied, No. 83-625 (April 16, 1984), the court warned against allowing a school board to use a court's remedial powers to upgrade the system "in ways only remotely related to desegregation." at 813. That court pointed out that determining an appropriate funding level may include programs that will "materially aid the success of the overall desegregation effort." at 813. See also *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Plyler v. Doe*, 457 U.S. 202 (1982).

The First Circuit has also spoken out on the scope of a court's remedial desegregation powers. In *Morgan v. McKeigue*, 726 F.2d 33 (1st Cir. 1984), the Court vacated certain orders of the district court in Massachusetts regarding specific items in the Boston school budget. The appellate court noted that it could

not affirm the orders because the district court failed to make "findings from which [the Court] can judge the effect of this mandated expenditure upon proper desegregation goals." at 35. The Court referenced the *Swann v. Charlotte-Mecklenburg* principle that "if the remedy goes beyond eliminating unconstitutional desegregation, it is improper." *Morgan*, at 34.

Although the Eighth Circuit professes to recognize the *Nyquist* principle, *Liddell v. State of Missouri*, No. 83-1957, Order February 8, 1984, at 51-52, its interpretation is too broad. The Eighth Circuit stated that "it is sufficient to determine that the remedial program is directed to cure the general condition offending the constitution." at 51 n. 18. The problem with the appellate court's approach is that it places no effective limit on the remedies possible. Moreover, it positions the Eighth Circuit out of line with other contemporary desegregation decisions. While other courts are recognizing and enforcing the limit on desegregation powers of district courts, the Eighth Circuit has given the district court practically unbridled powers in the school system in St. Louis. Rather than requiring specific and detailed findings "indicating specifically why and in what respect the order is necessary and appropriate to achieve valid desegregation goals as yet unfulfilled", *Morgan* at 35, the Eighth Circuit requires only that the remedies ordered affect the "general condition offending the constitution."

What is obvious from the improvements ordered by the courts is that all of them are aimed at improving the general condition of the system. There have been no findings suggesting how the system affected races differently. There is no finding that programs at black schools were inferior to those in white schools. There is no evidence to suggest that physical facilities were intentionally of poorer quality for black students than for white students. Likewise, there is no finding that the programs will materially aid the desegregation effort. Indeed, the only finding concerning capital improvements is that they had no effect on alleviating unconstitutional discriminatory

practices between 1954 and 1972. Based on this pronouncement, the court's order requiring the State to fund capital improvements simply cannot stand.

In the instant case, the City Board and various suburban school districts promulgated the interdistrict plan. Of course, it was designed to benefit the interests of its drafters. However, absent some showing of educational disadvantage occasioned by disproportionate facility or program problems, the improvements in quality of education are not supported. There certainly has been no showing that the quality of education in the City of St. Louis would be better if the constitutional violations had never occurred. Absent a finding of the incremental effect of the past discrimination, a proper remedy cannot be fashioned. *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 420 (1977); *Milliken II* at 280.

The improvements requested by the City Board focus on improving the overall, general quality of education children receive in St. Louis. These improvements are not based on past discriminatory practices, but rather, are based on a Utopian desire to offer students in St. Louis the best education possible. As the State points out, citing the First Circuit, 'better quality education as a general goal is beyond the proper concern of the desegregation court.' Petition at 26 citing *Morgan v. Kerrigan*, 530 F.2d 401, 429 (1st Cir. 1976). Courts should not allow themselves to be tools of manipulative school systems that seek to benefit as best they can from a constitutional violation. It is not the role of the Court in a desegregation case to abet such behavior.



### CONCLUSION

For the foregoing reasons, certiorari should issue to review and correct the decision below, by reversing the Court of Appeals' judgment.

Respectfully submitted

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**In the Supreme Court of the United States**

**October Term, 1983**

STATE OF MISSOURI, et al.,  
*Petitioner,*

vs.

CRATON LIDDELL, et al.,  
*Respondent.*

**BRIEF AMICI CURIAE IN SUPPORT OF THE  
GRANT OF A WRIT OF CERTIORARI ON BEHALF  
OF THE STATES OF ARKANSAS, ALABAMA, ARI-  
ZONA, CALIFORNIA, DELAWARE, GEORGIA, HA-  
WAI, IDAHO, INDIANA, IOWA, LOUISIANA, MICH-  
IGAN, MISSISSIPPI, NEBRASKA, NEVADA, NEW  
HAMPSHIRE, NEW JERSEY, OREGON, TENNES-  
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## INTEREST OF AMICI CURIAE

The State of Missouri has petitioned for review of a decision by the Eighth Circuit imposing heavy financial burdens to fund a school desegregation remedy. But this is not a case which raises questions limited to desegregation issues. Instead, it is a case which asks this Court to focus on the far broader question of the appropriate limits of the remedial power of federal courts and to recognize that, in this case, those limits have been exceeded. The questions presented by the Petitioner, State of Missouri, in its Petition for Certiorari must be addressed in any case in which a constitutional violation is alleged by a plaintiff. The desegregation aspects of the case are but the factual setting for the fundamental questions of the appropriate scope of the courts' remedial authority which are raised herein.

From the point of view of amici states, the decision below is especially troubling for two reasons. First, the Court of Appeals and the district court both failed to make the kind of inquiry necessary to sustain such expansive relief. Neither court attempted to define the scope of the constitutional right at issue, the effects attributable to the state's violation of that right, or the boundaries of a remedy properly tailored to correct those specific effects. At a time when states are under the twin pressures of limited resources and increased demands for services, the courts should be particularly careful in distinguishing between legitimate constitutional remedies, on the one hand, and desirable social policy directives, on the other.

The second troubling aspect of the decision below is, in large measure, an elaboration of the first. The need for a searching judicial inquiry is even greater when, as here, the remedy results from a negotiated agreement by local government units (and their plaintiff citizens), who

then look to the state for involuntary funding. Governmental units and subdivisions have an understandable interest in securing as much of the state dollar as they can. By and large, however, the proper means for addressing this concern is through the political processes, not the federal courts. It is imperative, in the view of the states, that the courts not become embroiled in these budgetary disputes under the pretext of redressing ill-defined constitutional violations.

## REASONS FOR GRANTING THE WRIT

### **I. The Decision Below Imposes Enormous Financial Burdens on a State Without Properly Finding That Such Expenditures Are Required to Redress the Effects of the State's Constitutional Violation.**

It is well settled that "a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation." *Milliken v. Bradley*, 418 U.S. 717, 738 (1974). While often articulated, however, this general principle is not always rigorously applied. If a remedy is in fact to be precisely tailored, a federal court must make three discrete but interrelated inquiries: first, what is the content of the right that has been violated; second, what are the effects that have been caused by the violation in question; and third, what remedial steps are necessary to redress the identified effects. See, e.g., *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375 (1982); *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977); *Milliken v. Bradley*, *supra*; *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971).

The need for a careful inquiry does not rest on a formalistic respect for legal niceties. The plain fact is that in any constitutional case involving a claim for services—be it a school case, or a hospital or prison conditions case—there is necessarily a line at which the appropriate content of a remedy ends and the universal quest for better programs begins. That line may at times be somewhat porous or imprecise, but that consideration only means that *more* care should be taken in assessing the legitimate dimensions of a remedy. Where the right in question is reasonably precise—e.g., the right to trial coun-



sel—or where the state is the only likely cause of a particular constitutional deprivation—*e.g.*, the lack of sanitary conditions in a state-operated hospital—the remedial inquiry can be more readily kept within definable boundaries. But where the right is indeterminate—*e.g.*, a right to treatment—or here causality is unclear—*e.g.*, regression of hospitalized patients—the potential for judicial overreaching is great.

It is hardly surprising, moreover, that judges would seek to preserve their flexibility with respect to remedial decision-making. A federal court necessarily faces only relatively discrete situations—a school system, a hospital, a prison. These individual situations can always be improved, and, as this Court has reminded, judges “have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable . . .” *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). Collectively, these factors exert a not-so-subtle pressure on the courts to err on the side of broad remedial plans.

The problem for the states, however, is that they deal not with a single system or facility, but with many competing claims as well as practical limitations on available resources. For example, the money needed to develop new school programs and buildings in one school district can only come from other school districts, other state programs or new revenues. Since the last option is not infinitely expandable, it is the first two that usually must look to. This redistributive effect of unchecked remedial decision-making tends to take on a life of its own, leading to ever-increasing demands on the states. The requirements embodied in the most demanding decree become the constitutional minimum within (and sometimes even beyond) a particular jurisdiction. In the meantime, those programs that have had their resources depleted in order

to fund the requirements of an existing remedy are likely to decline as a result, and thus themselves become ripe for suit. Alternatively, persons who might otherwise use the traditional political processes to seek better services are likely to find that there are few resources remaining and that they too must seek a judicial order to protect their own particular interests.

This is not to suggest that the federal courts should ignore their constitutional responsibilities. If a violation is found, it should be remedied. But that open-ended remedial process must be cabined by assuring rigorous adherence to the principles set forth earlier: a clear definition of the content of the right; clear findings concerning the causal relationship between the violation and the conditions to be remedied; and relief limited to those acts that are necessary to correct the effects caused by the violation.

When assumptions about the content of rights and the causes of existing conditions become a substitute for thoughtful judicial analysis, the process is almost certain to breed error. And just as importantly, a court cannot simply assume that state action caused a constitutional violation.<sup>1</sup>

For these reasons, it is imperative that a court make the requisite findings *before* imposing relief. Otherwise, a state can be held liable for correcting conditions that it neither created nor was in any way responsible for.

To the extent that conditions result from a constitutional violation, or to the extent that remedial efforts are

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1. As the Court stated in *Milliken v. Bradley*, *supra*, 418 U.S. at 747, n. 22, "[t]he suggestion . . . that schools which have a majority of Negro students are not 'desegregated' whatever the racial makeup of the school district's population and however neutrally the district lines have been drawn and administered finds no support in our prior cases."

needed to cure the past effects of an *established* violation, judicial intervention is appropriate. See, e.g., *Milliken v. Bradley*, *supra*, 433 U.S. 267, 283 (1977). Absent these considerations, however, a court must stay its remedial hand. In the present case, this distinction was not even addressed.

We reiterate: (1) the imposition of a remedy must be based upon a clear definition of the content of a constitutional right infringed; (2) courts must make clear findings regarding the causal relationship between a violation found and the conditions to be remedied; and (3) courts must limit the remedy imposed to those efforts which will correct the effects caused by the violation.

The Eighth Circuit failed to adhere to these requirements while approving what is certainly one of the most costly and expansive remedies ever ordered by a federal court. Further review is necessary to correct this fundamental error in approach.

## **II. Careful Judicial Scrutiny of a Remedial Plan Is Especially Necessary When It Is the Product of a Negotiated Agreement That Includes Political Subdivisions but Not the State.**

In addition to the need for the kind of careful judicial scrutiny that should generally attend remedial decision-making, this case presents special considerations meriting even greater attention. The remedy adopted was essentially negotiated by local government units who then asked the district court to require the State to pay for most of what was in their agreement. This process should have alerted the courts below to the potential for overreaching by parties who would obviously be eager for more services, especially when they did not have to pay for them.

Rather than remaining alert to this concern, however, the lower courts evidently thought that *less* judicial scrutiny was needed because the relief was embodied in a settlement agreement. As the district court put it, “[f]inding parties, as diverse as those present here, reaching such a degree of unanimity as has been achieved by the proponent plaintiffs and the twenty-three St. Louis school districts, would give any court pause before disapproving the efforts of these parties to find a voluntary solution to a complex constitutional problem in which legal, education, political, and financial problems are inextricably intertwined.” Pet. App. 108a.<sup>2</sup> The Court of Appeals similarly noted the importance of the “unique and comprehensive settlement agreement. . .” Pet. App. 13a. See Pet. App. 32a.

In our view, the courts below viewed the case backwards. By concentrating on the virtue of voluntary remedial agreements rather than the vice of involuntary funding orders, both the district court and the Court of Appeals improperly sanctioned the use of the judicial process to reconstruct the traditional relationship between state and local governments. In particular, at least in cases where a state has been found to have committed a violation, the approach below would permit local governments to bargain away some of their own right to govern in return for an agreement that will protect or improve their financial positions. Worse yet, perhaps, it would give local governments the ability to secure additional services by

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2. The court also stated that “[s]ociety’s greatest opportunities lie in encouraging human inclinations toward compromise, rather than stirring our tendencies for competition and rivalry. If lawyers, educators, and public officials do not help marshal cooperation and design mechanisms that promote peaceful resolution of conflicts, we have missed an opportunity to participate in the most creative social experiments of our time.” Pet. App. 107a (citation omitted).

dressing them up in a so-called "settlement agreement." The facts of the instant case demonstrate that these concerns are not fanciful.

The City Board, itself having been found liable for precisely the same violation as the State, decided that it could best protect its interests by switching sides and placing itself in an affirmative posture with respect to relief. It thus became a plaintiff in an expanded metropolitan-wide suit that included the suburban school districts as defendants.<sup>3</sup> The suburban school districts, in turn, faced with a potential judgment that could have both financial and autonomy implications,<sup>4</sup> "agreed" to large numbers of interdistrict transfers. This would have been acceptable, of course, if the suburban districts had (along with the City Board) also agreed to pay for these transfers. But, rather than taking on that responsibility, these governmental units used the federal court to shift financial responsibility to the State. Indeed, not satisfied with requiring the State merely to pay the cost of transfers, the city and suburban boards added in state-funded "incentive payments" so as to further improve their financial positions.

The nature of the settlement process similarly skewed the other components of the remedy. For example, the City Board added in a host of educational programs and capital improvements that might well be desirable if funding were unlimited. Predictably, the plaintiffs em-

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3. The City Board's status as plaintiff, even in a metropolitan-wide suit, seems dubious. It is difficult to see what rights it had that could have been violated. Because of the way in which the intradistrict and interdistrict claims were merged, however, this issue was not addressed.

4. Before the interdistrict liability claims had been resolved, the district court announced that, if a violation was found, it would dissolve the independent school districts, create a single metropolitan district, and impose a uniform tax rate. Pet. App. 19a

braced these efforts and the suburban districts did not object to them. Pet. App. 183a-184a. As Judge Bowman pointed out, "[n]one of [the parties] had any real incentives to prevent the others from piling their plates high with programs and funds that would benefit their school systems." Pet. App. 97a (dissenting opinion). The majority decision, however, gave no weight at all to this consideration.<sup>5</sup>

Quite apart from the merits of the programs themselves, the Court of Appeals also paid little attention to the disproportionate share of funding exacted from the State. Nowhere does the court explain, for example, why the costs of compliance should be as they were set forth in the settlement, which leaves the State with 100 per cent of many of the costs. If, as the court ruled, the remedy is required to correct the violation in the city, there is no reason given to explain why two co-violators—the City Board and the State—should be assigned disparate financial responsibility. Likewise, to the extent that the remedy simultaneously served to resolve the outstanding claims against the suburban school districts, there is no explanation about why they should not have to bear any financial responsibility. See Pet. App. 86a (Gibson, J., dissenting) ("The county school districts profit immeasurably by the settlement agreement, as nearly all of the funding obligation is placed upon the State and they are

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5. While the specific issue of territorial limits on relief is most likely to arise in school and housing discrimination cases, the general concerns described in text are relevant in other situations as well. For example, in a case where counties have responsibility for deciding whether to place mentally disabled people in institutional or community residences, and plaintiffs seek to increase reliance on the latter, the counties may well be willing to agree with plaintiffs if the state can be required to pay for the community placements that the plaintiffs and counties mutually design. The behavior of the St. Louis City Board in this case is of a similar quality.



relieved of the risk of being found to have in any way contributed to any interdistrict violation."').<sup>6</sup> It certainly would appear likely that if funding responsibilities had been allocated differently the parties would have been less willing to embrace such a far-reaching remedy.

In sum, rather than taking comfort from the partial acquiescence achieved through the settlement agreement, the courts below should have cast a skeptical eye at a remedy produced through an obviously biased process. At a time when local governments are becoming increasingly dissatisfied with the level of state funding available for their programs, it is all too easy to secure their agreement to constitutional remedies calling for services that they do not have to fund. Indeed, local governments that seek more staff, better buildings and other programmatic improvements have every reason to settle with plaintiffs—even if such a settlement restricts their autonomy or programmatic discretion—when the costs of these benefits can be involuntarily shifted to the state. For these reasons, "the need for judicial alertness and careful fact-finding, [is] especially critical in this case." Pet. App. 93a (Bowman, J., dissenting). The failure to satisfy this need merits further review.

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6. The Court of Appeals made "clear that the suburban schools meeting the goals set forth in the [settlement] plan will receive a final judgment declaring that they have satisfied their desegregation obligations." Pet. App. 15a. This result would appear to be a curious by-product of a remedy designed to redress a violation affecting only city students.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**In the Supreme Court of the United States**

OCTOBER TERM, 1984

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RONALD A. LEGGETT, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

---

STATE OF MISSOURI, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

---

NORTH ST. LOUIS PARENTS AND CITIZENS FOR  
QUALITY EDUCATION, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

---

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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**BRIEF FOR THE UNITED STATES**

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## QUESTIONS PRESENTED

1. Whether in light of *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), and *Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*), the court of appeals erred in requiring the State of Missouri to fund a comprehensive interdistrict desegregation remedy in the absence of district court findings sufficient to show that the remedy was "tailor[ed] \* \* \* to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the intradistrict violation that the State had been found to have committed.

2. Whether the court of appeals placed improper restrictions on the St. Louis Board of Education's taxing prerogatives in connection with the latter's funding obligations under the desegregation plan.

3. Whether the court of appeals erred in concluding that the desegregation remedy was fair to all members of the plaintiff class.



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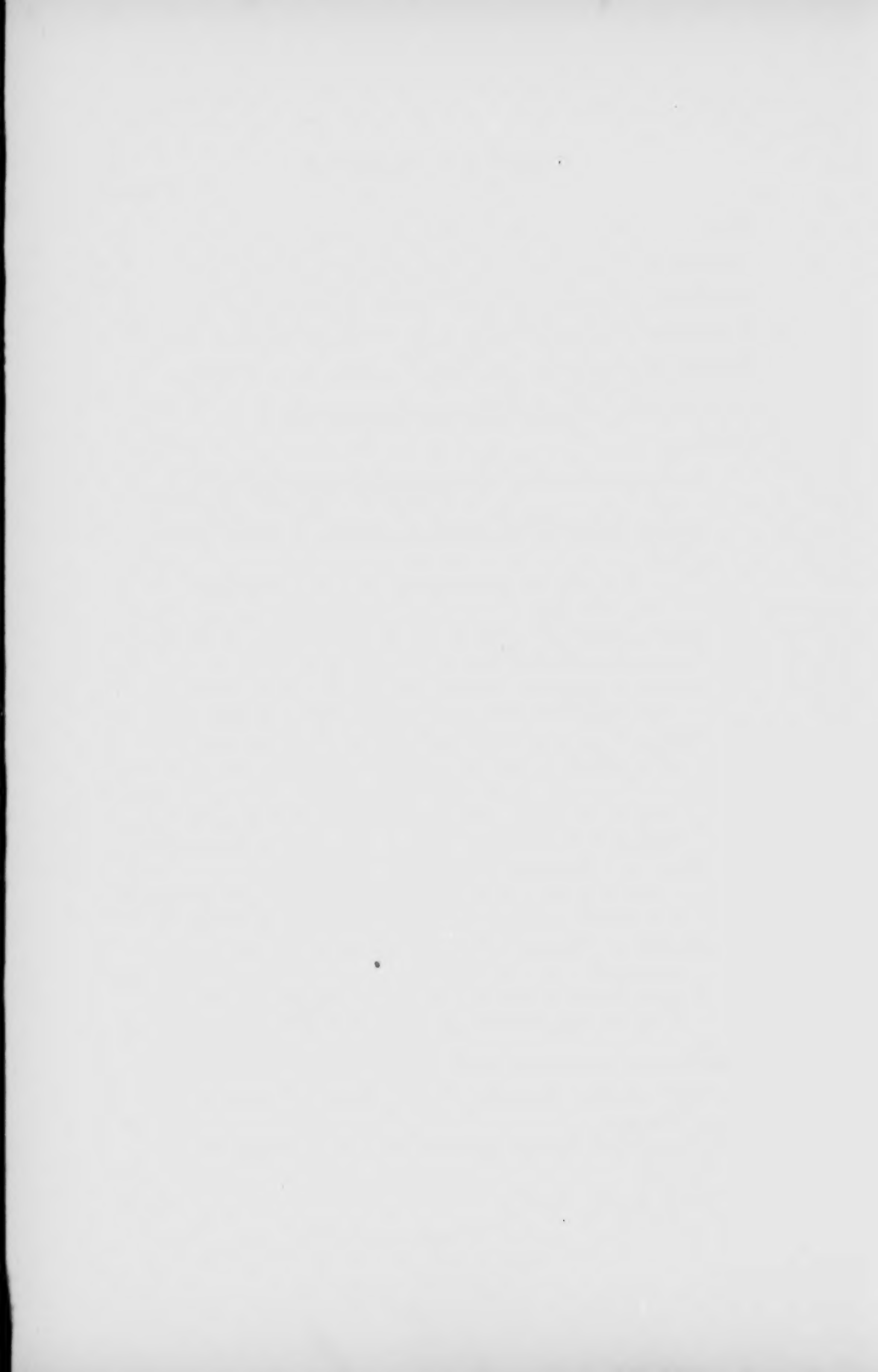
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**In the Supreme Court of the United States**

OCTOBER TERM, 1984

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No. 83-1386

RONALD A. LEGGETT, ET AL., PETITIONERS

*v.*

CRATON LIDDELL, ET AL.

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No. 83-1721

STATE OF MISSOURI, ET AL., PETITIONERS

*v.*

CRATON LIDDELL, ET AL.

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No. 83-1838

NORTH ST. LOUIS PARENTS AND CITIZENS FOR  
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*v.*

CRATON LIDDELL, ET AL.

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT*

---

**BRIEF FOR THE UNITED STATES**

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## OPINIONS BELOW

The opinion of the court of appeals (83-1721 Pet. App. 1a-94a) is not yet officially reported. The opinion of the district court (83-1721 Pet. App. 95a-147a) is reported at 567 F. Supp. 1037. Earlier opinions in the case are reported at 469 F. Supp. 1304 (1979), rev'd, 620 F.2d 1277, cert. denied, 449 U.S. 826 (1980); 491 F. Supp. 351 (1980), aff'd, 667 F.2d 643, cert. denied, 454 U.S. 1091 (1981); 677 F.2d 626, cert. denied, 459 U.S. 877 (1982).

## JURISDICTION

The judgment of the court of appeals (83-1721 Pet. App. 148a) was entered on February 8, 1984. The petitions for a writ of certiorari were filed on February 21, 1984, April 20, 1984, and May 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

The early history of this school desegregation case is summarized in our Briefs in Opposition in *Missouri v. Liddell*, cert. denied, 454 U.S. 1091 (1981) (No. 80-2152), and *Missouri v. Liddell*, cert. denied, 459 U.S. 877 (1982) (No. 81-2022). In order to delineate the questions presented here, that history, as well as the proceedings below, must be recapitulated in some detail.

### A. The intradistrict phase of the litigation

1. This action was commenced in 1972 by a group of black parents and their children (the Liddell group) against the Board of Education of the City of St. Louis and its officials (the City Board). The complaint alleged that the City Board had maintained and perpetuated an unconstitutional dual system of public education within St. Louis. A second group of black parents (the Caldwell group), the

City of St. Louis, and the United States intervened as plaintiffs. The State of Missouri, the State Commissioner of Education, and the State Board of Education (the State parties) were joined as defendants. Following a trial, the district court held that defendants had not committed any constitutional violation. *Liddell v. Board of Education*, 469 F. Supp. 1304 (E.D. Mo. 1979) (Meredith, J.). It concluded that the City school system, although originally operated as part of a de jure state segregated system, had become unitary through the City Board's adoption of a "neighborhood school" policy (469 F. Supp. at 1313-1314, 1318).

The court of appeals reversed, holding that the State and the City Board had jointly maintained a segregated school system in St. Louis. *Adams v. United States*, 620 F.2d 1277 (8th Cir.) (en banc), cert. denied, 449 U.S. 826 (1980). It found that the State had statutorily mandated separate schools until 1954, and that neither the State nor the City Board had taken effective steps to desegregate the City schools thereafter (620 F.2d at 1280-1281). It held that implementation of the "neighborhood school" plan had not disestablished the dual system (*id.* at 1280-1288) and that the City Board's policies since 1954 had aggravated existing segregation (*id.* at 1288-1291). The court required the City Board "to develop a system-wide plan for integrating the [City] schools," the costs of that plan to "be apportioned among the defendants as determined by the district court" (*id.* at 1295 & n.28). The court of appeals also suggested that the City Board investigate "other techniques" to remedy segregation within St. Louis, including the possibility of developing a voluntary program for "exchanging and transferring students with

the suburban school districts of St. Louis County" (*id.* at 1296).

2. On remand, the district court held that the State and the City Board were "jointly and severally liable" for segregation in the St. Louis schools. *Liddell v. Board of Education*, 491 F. Supp. 351, 357 (E.D. Mo. 1980) (Meredith, J.). It found that the State, "which prior to 1954 mandated school segregation, never took any effective steps to dismantle [that] dual system" (*id.* at 357). It accordingly concluded that the State parties were "primary constitutional wrongdoers who have abdicated their affirmative remedial duty" to "obliterate all vestiges of \* \* \* state-imposed segregation" (*id.* at 359). By way of remedy, the court approved a comprehensive intradistrict desegregation plan, and ordered that the State pay half its cost (*id.* at 353, 357). The court also ordered, in paragraph 12(a) of its decree, that the City Board, the State, and the United States "make every feasible effort to work out with the appropriate school districts in the St. Louis County \* \* \* a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis" (*id.* at 353).

The court of appeals affirmed. *Liddell v. Board of Education*, 667 F.2d 643 (8th Cir. 1981). It agreed with the district court's conclusion that the State parties were "primary constitutional wrongdoers" and found no abuse of discretion in the district court's ordering the State to pay half the cost of the intradistrict plan (667 F.2d at 655). It also rejected the State's challenge to paragraph 12(a) of the decree, a challenge predicated on the fact that "the suburban school districts [had not been] joined as parties" (667 F.2d at 650). The court noted that the State had

been ordered only to "make every feasible effort" to work out a voluntary interdistrict plan, that paragraph 12(a) "must be viewed as a valid part of the attempt to fashion a workable remedy within the City," and that, "[b]ecause the plan [was] to be voluntary," no question of enforcement was involved (*id.* at 651).

The State petitioned for certiorari, contending that it was not responsible for school segregation in St. Louis, that it should not have been ordered to fund any part of the intradistrict plan, and that paragraph 12(a) of the decree exceeded the district court's remedial authority (80-2152 Pet. 5, 12, 20). On the latter point, the State argued that, under *Milliken v. Bradley* (*Milliken I*), 418 U.S. 717 (1974), it could not be required to help develop a voluntary interdistrict plan absent the finding of an interdistrict violation (80-2152 Pet. 20-24). The United States opposed certiorari. We noted that a State may properly be ordered "to pay part of the costs of desegregation" where it has "abdicat[ed] [its] affirmative duty to disestablish the *de jure* system for which [it] bear[s] responsibility" (80-2152 Br. in Opp. 13). And we noted that, while *Milliken I* "prohibits the imposition of relief upon nonparty school districts," a court may permissibly "order those who have been found liable to make efforts to persuade those nonparty districts to cooperate voluntarily" (80-2152 Br. in Opp. 14 & n.17 (emphasis omitted)). Certiorari was denied (454 U.S. 1091 (1981)).

3. While the State's Petition in No. 80-2152 was pending, the district court (Hungate, J.) held hearings on the proposals submitted in response to paragraph 12(a) of its decree. On July 2, 1981, it approved a 12(a) plan for voluntary student exchanges between the City and the suburban school districts

(81-2022 Pet. App. A73-A108). The plan included fiscal and educational incentives designed to encourage students and suburban school districts to participate; participation was voluntary on the part of both. The district court concluded that the plan was "directly related to remedying racial segregation in St. Louis" and that it was "conducive to obtaining a proper level of constitutional compliance" by the State (*id.* at A106, A108). Fifteen suburban districts and approximately 1,200 students eventually agreed to take part in the 12(a) plan (83-1721 Pet. App. 23a, 112a). The State was ordered to pay the cost of this plan in full (81-2022 Pet. App. A102-A103).

The court of appeals affirmed. *Liddell v. Board of Education*, 677 F.2d 626 (8th Cir. 1982). It noted its previous holding that the State "had substantially contributed to the segregation of the public schools of the City of St. Louis" (677 F.2d at 629 (footnote omitted)). And it held that "[p]aragraph 12(a) [was] entirely enforceable against the state defendants" because they were "primary constitutional wrongdoers and, therefore, [could] be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district" (*id.* at 630 (citing *Hills v. Gautreaux*, 425 U.S. 284 (1976))).

The State again petitioned for certiorari, contending that it could not under *Milliken I* be required to bear the cost of the 12(a) plan absent a finding that it had committed an interdistrict violation (81-2022 Pet. 7-13). It noted that it had been found liable only for an intradistrict (city-wide) violation and that the 12(a) plan, while voluntary as to the suburban districts, was involuntary as to it. The United States



again opposed certiorari. We noted that "[t]he 12(a) plan was part of the district court's effort to remedy segregation within the City of St. Louis" and that, under *Hills v. Gautreaux*, *supra*, the State parties could be "required to take appropriate remedial action for the constitutional violations in which they participated" (81-2022 Br. in Opp. 8 & n.10). Certiorari was denied (459 U.S. 877 (1982)).<sup>1</sup>

#### B. The interdistrict phase of the litigation

1. While these appeals were pending, the trial court began proceedings to consider plaintiffs' charges of interdistrict violations. Although no interdistrict violations had been found, paragraph 12(c) of the original decree had, anticipatorily, ordered the City Board and the State to develop a "feasibility plan" of interdistrict relief designed "to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County" (677 F.2d at 629 & n.2, 639; 491 F. Supp. at 353) (emphasis supplied). Paragraph 12(c), unlike paragraph 12(a), envisioned a plan in which participation by suburban school districts would be mandatory rather than voluntary, and in which county-wide, as well as city-wide, school segregation would be addressed.

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<sup>1</sup> The State's Petition in No. 81-2022 also contended (Pet. 13-23) that the court of appeals had erred in upholding the district court's adoption of a plan for merging the vocational education programs of the city and county schools—referred to as "the 12(b) plan"—based on a finding that the State had violated the Constitution "by failing to merge [those] segregated \* \* \* programs" earlier (677 F.2d at 628, 632). Certiorari was likewise denied on that issue (459 U.S. 877) and no question concerning the vocational education programs is presented here.



Pursuant to paragraph 12(c), the Caldwell plaintiffs moved to join as additional parties defendant the 23 suburban school districts in St. Louis County (83-1721 Pet. App. 138a-139a; C.A. App. 7, 93-94). The Caldwell group likewise moved to amend its complaint to allege that the State and the suburban districts had established, with segregative intent, "a racially dual system of public education in the St. Louis metropolitan area" (C.A. App. 7, 89; 83-1721 Pet. App. 139a-140a). The St. Louis metropolitan area was defined to include the City of St. Louis, St. Louis County, and two adjoining counties (83-1721 Pet. App. 140a). The City Board simultaneously moved to realign itself as plaintiff and likewise alleged interdistrict violations requiring interdistrict relief (C.A. App. 1-2, 53-85; 83-1721 Pet. App. 138a-140a). The district court (Hungate, J.) granted these motions in substantial part (C.A. App. 47-52; 83-1721 Pet. App. 138a-139a) and certified the Caldwell plaintiff class "as comprising all students, and their parents, now attending or who will attend Missouri public \* \* \* schools located in the metropolitan St. Louis \* \* \* area" (83-1721 Pet. App. 142a).<sup>2</sup>

To support their charges of interdistrict segregation, plaintiffs alleged that the State and the suburban districts, separately or in conjunction with one another, had engaged in discriminatory funding decisions, discriminatory housing and land use policies,

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<sup>2</sup> Various appeals were filed from the district court's orders joining certain suburban school districts as defendants and staying proceedings against others. The Eighth Circuit in its 1982 decision held that it lacked jurisdiction of these appeals and of other interlocutory appeals filed in the interdistrict phase of the case (677 F.2d at 639, 640-641).

failures or refusals to consolidate school district boundaries, discriminatory school closings, gerrymandering of attendance areas, discriminatory pupil transportation, discriminatory faculty assignments, and discriminatory allocation of resources (83-1721 Pet. App. 139a-140a; C.A. App. 79). Defendants denied these allegations (83-1721 Pet. App. 141a). In March 1982, the district court, reversing the normal procedure, held hearings to determine what remedy it would impose in the event that it should find an interdistrict violation (C.A. App. 108-109). It declared that it would adopt a "mandatory interdistrict plan" which would dissolve the suburban districts and create a single metropolitan school district with an area-wide student transportation system (83-1721 Pet. App. 19a; C.A. App. 111-118). The court then scheduled a trial to determine whether any interdistrict violations had in fact occurred (83-1721 Pet. App. 142a).

2. No hearing on interdistrict liability took place. On the eve of trial, the original plaintiffs, the City Board, and the suburban school districts entered into an agreement "to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims" (83-1721 Pet. App. 151a). The agreement was expressly made contingent on a court order establishing adequate funding (*id.* at 223a), and specified that funding should come from the State and the City Board (*id.* at 224a-226a). Neither the United States nor the State was a party to the settlement agreement.

The agreement aimed to settle plaintiffs' interdistrict claims without resort to court-ordered busing and without destroying the integrity of the 23 suburban districts (83-1721 Pet. App. 227a). It has three main components:

a. *Voluntary Interdistrict Transfers.* The interdistrict transfer plan is generally designed to encourage black students from the City to transfer voluntarily to suburban schools, and to encourage white students from the suburbs to transfer voluntarily to City schools. The transfers are to be facilitated by magnet school programs that are intended “[t]o provide broader educational opportunities to students in the metropolitan area” and “[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area” (83-1721 Pet. App. 173a). Each suburban district is generally required, over a five-year period, to increase its minority enrollment by 15%, or to 25%, whichever is less (*id.* at 159a-166a). It is expected that about 15,000 students will transfer from the City to the suburbs, and about 3,000 students from the suburbs to the City (*id.* at 23a, 153a).

b. *Quality Education Improvements.* These are designed to enhance the quality of education in all City schools, with the general objective of enabling the system to retain an AAA rating under standards set by the Missouri Department of Education (83-1721 Pet. App. 54a, 247a). The agreement mandates, among other things, a reduction in class size to a 25:1 pupil-teacher ratio (*id.* at 185a); provision of audio-visual services (*id.* at 247a); restoration of art, music, and physical education courses (*id.* at 249a); development of programs to promote computer literacy and career education (*id.* at 192a); hiring of additional school nurses, social workers, psychologists, and athletic coaches (*id.* at 250a, 262a); establishment of all-day kindergartens and pre-school centers (*id.* at 252a); expansion of services for handicapped students (*id.* at 250a); establishment of programs to improve science instruction (*id.* at 249a); and expan-

sion of the "English as a second language" program (*id.* at 260a). The quality education component of the settlement also includes special programs targeted to all-black City schools, such as a further reduction in class size (to a 20:1 pupil-teacher ratio), after-school classes, Saturday instruction, peer tutoring, summer schools, parental involvement and "role model" programs (*id.* at 197a-200a, 242a-243a).

c. *Capital Improvements.* The settlement agreement recites that "[t]he general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age" (83-1721 Pet. App. 193a). It notes that in recent years "the cost of [critically needed facilities] invariably exceeded [the City Board's] funding capacities," a shortfall exacerbated by voters' repeated refusals to ratify school bond issues (*id.* at 281a-282a). The agreement accordingly mandates a program of deferred maintenance and a "comprehensive program of general renovations, associated program improvements, and modernization" of the City schools (*id.* at 283a).

3. The signatory parties—the Liddell and Caldwell plaintiffs, the suburban school district defendants, and the City Board—presented the settlement agreement to the district court for approval (83-1721 Pet. App. 103a). The court held a hearing to determine whether the agreement met the standards for approving class action settlements under Fed. R. Civ. P. 23, that is, whether the agreement was "fair, reasonable and adequate for the resolution of the 12(c) interdistrict phase" of the case (83-1721 Pet. App. 103a, 143a-144a). The court made no inquiry into the merits or substantiality of plaintiffs' allegations of interdistrict violations by the suburban districts and the State, or into the relative strength of those charges. Nor did the court inquire whether the

State's intradistrict violation had any interdistrict effects.

The district court (Hungate, J.) approved the plan without substantial modification (83-1721 Pet. App. 95a, 108a-119a) and declared that primary responsibility for funding it would rest with the State and the City Board, the "parties who ha[d] been adjudicated as liable \* \* \* for segregated conditions within the City's public schools" (*id.* at 128a). The State was ordered to bear the full cost of implementing the interdistrict transfer plan and the magnet schools (*id.* at 96a-97a). The State was ordered to bear the full cost of implementing the quality education program outside St. Louis and half the cost of that program within St. Louis (*id.* at 96a-97a). And the State was ordered to bear half the initial costs of implementing the city-school capital improvements program, being required to match "[a]ny amount raised for capital expenditures by [the] City Board through a voter-approved bond issue at any time during 1983-1984" (*id.* at 97a, 127a). Estimates of the settlement's first-year cost ranged from \$37 million to over \$100 million (*id.* at 128a). The State's share for the 1984-1985 school year is estimated to be \$49 million (*id.* at 87a). The suburban school districts were not required to pay anything (see *id.* at 20a).

The City, the State parties, and the United States objected to these funding provisions, contending that they exceeded the scope of the intradistrict violation shown on the record (83-1721 Pet. App. 105a, 113a). The district court rejected these arguments. It concluded that it "ha[d] the authority to order the State \* \* \*, which has already been adjudicated a primary constitutional violator in causing school segregation in the City \* \* \*, to fund the voluntary interdistrict transfers and [the] improvements in the quality of education \* \* \* in order to further remedy the State



defendant's constitutional violations" (*id.* at 129a). And it concluded that it "ha[d] the authority to order the City Board, already adjudged a constitutional violator, to increase its tax rate, if necessary" to fund its share of the agreement's cost (*id.* at 129a-130a). Although the Court did not order an immediate property tax increase, it ordered the City Board to submit a new bond issue to the voters (*id.* at 97a) and enjoined a scheduled reduction in the City Board's tax rate (*id.* at 130a, 133a-134a).

4. A divided court of appeals, sitting en banc, affirmed the district court's order in substantial part (83-1721 Pet. App. 1a-94a). In the majority's view, the settlement agreement, although drafted in response to plaintiffs' allegations of interdistrict segregation by both the State and the suburban districts, also served in large measure to remedy the State's proven intradistrict violation. The court thus held that the State could be required to fund the bulk of the plan even though it was not a party to the settlement and even though it had not been found to have committed any interdistrict wrong.

a. The majority viewed the interdistrict transfer plan as "intrinsic to an effective remedy for the [State's] intradistrict violation" (83-1721 Pet. App. 25a). Because "[t]he potential for integration within [St. Louis] was limited by the fact that almost eighty percent of the students were black," interdistrict transfers, in the majority's view, were necessary to "return[] the largest number of victims to integrated schools" (*id.* at 32a, 34a). The court rejected the contention, advanced by Missouri and by the United States (*id.* at 22a), that the district court's factual findings were insufficient to support the remedy it decreed. Rather, the court of appeals concluded that the interdistrict transfer plan "was closely



tailored to the nature and scope of the violation" (*id.* at 31a), noting that "the State's presence in public education [was] immense" and that the State had previously maintained a *de jure* dual school system (*id.* at 32a). The court held that "the remedial limits imposed by *Dayton Bd. of Educ. v. Brinkman* [*Dayton I*], 433 U.S. 406 (1977), [were] inapposite to this case," reasoning that "[t]he findings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10).<sup>3</sup>

The court also affirmed the funding order respecting many of the agreement's quality education provisions. It noted that such programs may be "proper components of a desegregation remedy so long as they relate to the constitutional violation, are remedial in nature, and [respect] local autonomy" (83-1721 Pet. App. 46a, citing *Milliken v. Bradley* (*Milliken II*), 433 U.S. 267, 280-281 (1977)). The court concluded that these conditions were met in the case of programs targeted to the City's all-black schools (83-1721 Pet. App. 52a), programs "necessary to the city schools to retain [the system's] AAA rating" (*id.* at 56a),<sup>4</sup> and programs involving "preschool cen-

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<sup>3</sup> Besides upholding the city-to-suburbs and suburbs-to-city student transfer plan, the court of appeals agreed that the State, given its "status as a violator of the Constitution" (83-1721 Pet. App. 43a), could properly be required "to pay the full capital and operating costs of magnet schools" in St. Louis. But the court reversed as remedially unjustified the district court's order that the State pay the costs of magnet schools in the suburbs (*id.* at 44a) and of the suburb-to-suburb student transfers (*id.* at 38a-39a). The suburb-to-suburb transfer plan involved 304 students (*id.* at 24a).

<sup>4</sup> Such programs included library and media services, audio-visual services, reduction in class size, and restoration of art, music, and physical education programs (83-1721 Pet. App. 56a).

ters, planning and program development, all-day kindergarten, parental involvement, desegregation planning, long-range planning, and public affairs" (*ibid.*). These programs, in the court of appeals' view, were needed "to overcome the inequalities inherent in dual school systems" (*id.* at 46a) and "to enhance the appeal of the city school system, thereby promoting the chances of a stable and successful voluntary desegregation plan" (*id.* at 47a). The court held that the State could properly be required to pay half the cost of the enumerated programs, rejecting its argument that the district court had erroneously "approved funding for general education improvements \* \* \* unrelated to desegregation" (*id.* at 50a). But the court found "[in]adequate support in the record" for the other quality education programs in the settlement agreement, concluding that they had not been shown to be "essential as remedial or compensatory" (*id.* at 56a).

Finally, the court upheld the capital-improvement aspects of the settlement. It concluded that the State "had an obligation to pay one-half of the costs of [a] program necessary to restore the city [school] facilities to a constitutionally acceptable level" (83-1721 Pet. App. 58a-59a). And it sustained the City Board's funding obligations as to the other half of the costs, while disagreeing with the district court's orders directing precisely how that money should be raised.<sup>5</sup>

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<sup>5</sup> Specifically, the court of appeals found error in the district court's injunction against the scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings "that all other fiscal alternatives were unavailable or insufficient" (*id.* at 66a). To avoid

b. Judge Gibson concurred in part and dissented in part (83-1721 Pet. App. 73a-86a). While believing that the settlement plan was "an inspired and far reaching one" (*id.* at 86a), he concluded that the majority in two respects had "improperly require[d] the State to fund a remedy far broader than [the] constitutional violation" (*id.* at 73a). Under this Court's decisions, he noted (*id.* at 77a-78a), "a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation'" (*Hills v. Gautreaux*, 425 U.S. at 293-294 (quoting *Milliken I*, 418 U.S. at 744)). Although "the nature of the constitutional violation by the State of Missouri ha[d] been outlined only most generally" in the litigation thus far (83-1721 Pet. App. at 73a), that violation, Judge Gibson observed, was "at most intradistrict in nature," and there was "no hint of a finding that there was an interdistrict effect flowing from [it]" (*id.* at 79a). Because the trial court had found no interdistrict violation and had made "no findings \* \* \* as to the extent of the remedy required" to redress the intradistrict violation, Judge Gibson concluded that the record neither demonstrated the need for a comprehensive interdistrict transfer plan nor justified imposition of its cost upon the State (*ibid.*).

Judge Gibson also dissented from the majority's holding that the State must "participat[e] in funding capital improvements" within the St. Louis school system (83-1721 Pet. App. 84a). While acknowledging that the majority had "correctly describe[d] the age, deterioration, and deferred maintenance" of the

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"serious[] disrupt[ion of] St. Louis' system of school finance," however, the court permitted the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a).

system's physical plant, he noted that there was "no finding in the district court order [that these conditions were] related in any way to the constitutional violations of either the City Board or the State" (*id.* at 83a, 84a). Indeed, "[t]here [was] nothing to suggest that the[se] condition[s] [were] other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities" under local law to maintain the schools properly (*id.* at 84a). Under these circumstances, Judge Gibson concluded, "[t]o order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found" (*ibid.*).

c. Judge Bowman dissented (83-1721 Pet. App. 87a-94a). He agreed with Judge Gibson that the record did not support "the interdistrict aspects of the remedy" or "the requirement that the State provide funding for capital improvements" (*id.* at 87a). But he also found the record inadequate to justify compulsory State funding "for the array of costly programs" required by the settlement's quality education provisions (*ibid.*). However laudable such amenities might be "from an educational standpoint," Judge Bowman said, the district court had authority to impose them only if they were "tailored to the incremental segregative effects that have been caused by the Constitutional violation" (*id.* at 87a-88a). The record in the case, Judge Bowman concluded, gave the court of appeals "no basis for an intelligent and principled determination" as to whether the programs approved by the district court reflected "Constitutional necessity" or amounted to a mere "judicial excursion into policy-making and educational experimentation" (*id.* at 88a).

Judge Bowman emphasized that a district court under *Dayton I* must make factual findings sufficient

to show that the remedy it decrees does no more than "restore the students in the affected school district 'to the position they would have occupied in the absence of' " the constitutional violation (83-1721 Pet. App. 90a (quoting *Milliken II*, 433 U.S. at 280)). In this case, Judge Bowman observed, the desegregation plan was not "fashioned by the district court after careful findings of fact of the kind required by" *Dayton I*. Rather, it was "fashioned by agreement of the City [Board], the suburban school boards, and the plaintiffs," whereas the State, "which must bear the brunt of the costs," had not agreed to the settlement (83-1721 Pet. App. 88a-89a).

"The process by which the settlement plan came into being," Judge Bowman pointed out (83-1721 Pet. App. 92a), "underscores the need for careful fact-finding before imposing \* \* \* its burdensome costs upon the State." He noted that the agreement was "intended to settle the broad interdistrict claims in [the] case" and that "it would be a most remarkable coincidence if a plan [so designed] was at the same time properly tailored to cure only the effects of the intradistrict violation" (*ibid.*). He stressed that "the negotiations leading to the plan largely excluded the State," that the suburban school districts "stood to reap substantial benefits" from the settlement without putting up any money, and that "[n]one of them had any real incentive to prevent the others from piling their plates high with programs and funds" at the State's expense (*ibid.*). "Such negotiations," Judge Bowman concluded, "are inherently unlikely to produce a remedy narrowly tailored to the Constitutional wrong and any present-day educational deficiencies resulting therefrom" (*ibid.*). He would thus have reversed the district court's judgment and



remanded for further factual findings (*id.* at 93a-94a).

### DISCUSSION

Unlike many school desegregation remedies, which rely to a greater or lesser degree on mandatory busing and other coercive measures, the plan approved by the district court here seeks to accomplish desegregation by creating incentives for voluntary integrative student transfers. The plan was developed in a spirit of reasonableness and compromise. The negotiations that produced it were free of the racial animus that often hobbles desegregation efforts. In these respects, the plan in Judge Gibson's words is indeed "an inspired and far reaching one" (83-1721 Pet. App. 86a). As a forward-looking attempt to accomplish stable and lasting desegregation—a result that has often eluded programs placing greater reliance on coercive techniques—the plan has much to commend it.

It is thus with considerable reluctance that we must note error in the decision below. The court of appeals, in our view, has exceeded the proper limits of federal judicial power by allocating in an inequitable manner the costs of remedying racial segregation in the St. Louis metropolitan area. In so doing, it worked a serious injustice against the State. The State of Missouri, without its consent, has been ordered to bear the cost of a comprehensive interdistrict remedy whose scope—based on the record before the court of appeals—cannot possibly be called "commensurate to the \* \* \* violation[]" (*Dayton I*, 433 U.S. at 417) that the State was found to have committed. The court of appeals erred in approving that remedy, and its error is due chiefly to misapprehension of the principles laid down by this Court in *Dayton I*.



1. "The controlling principle consistently expounded" in this Court's school desegregation decisions "is that the scope of the remedy is determined by the nature and extent of the constitutional violation" (*Milliken I*, 418 U.S. at 744, citing *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 16 (1971)). Accord, *Hills v. Gautreaux*, 425 U.S. at 293-294. Thus, while a federal court has the "duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future" (*Louisiana v. United States*, 380 U.S. 145, 154 (1965)), judicial remedial powers may "be exercised only on the basis of a violation of the law and [may] extend no further than required by the nature and the extent of that violation" (*General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 399 (1982)). The Court has repeatedly emphasized that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). In other words, "it must always be shown that the constitutional violation caused the condition for which remedial programs are mandated" (*id.* at 286 n.17).

In *Dayton I*, this Court clarified the responsibilities of the lower courts to demonstrate, through careful findings of fact, that their remedial decrees comport with these limitations on federal equity power. The Court "granted certiorari to consider the propriety of [a] court-ordered [school desegregation] remedy in light of the constitutional violation which [had been] found by the courts below" (433 U.S. at 409 (citation omitted)). The court of appeals had imposed a comprehensive systemwide remedy based on the district court's finding of "isolated but repeated

instances of failure by the [City] School Board to [bring about] an integrated school system" (*id.* at 410 (original quotation marks omitted)).

This Court held that the district court's findings gave the court of appeals "no warrant \* \* \* for imposing the systemwide remedy which it apparently did" (433 U.S. at 417), a remedy that was "entirely out of proportion to the constitutional violations found by the District Court" (*id.* at 418). This Court emphasized that the relationship between remedy and wrong in desegregation cases "must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles" (*id.* at 410). "Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation" (*id.* at 420 (original quotation marks omitted)). The responsibility for making the necessary factual findings rests with "[t]he District Court[] in the first instance" (*id.* at 419). The Court acknowledged that it "is a difficult task \* \* \* to make the complex factual determinations" needed to tailor a proper remedy in school desegregation cases, but concluded that such fact-finding was precisely "what the Constitution and our cases call for" (*id.* at 420). The Court held that "the disparity between the evidence of constitutional violations and the sweeping remedy finally decreed requires supplementation of the record and additional findings addressed specifically to the scope of the remedy" (*id.* at 419).

The court of appeals below concluded that "the remedial limits imposed by [*Dayton I*] are inapposite to this case," reasoning—with apparent reference to the statutorily-mandated dual school system prevalent in St. Louis until 1954—that "[t]he find-

ings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10). Although the full import of the court of appeals' statement is not entirely clear, the statement is incorrect as it stands. It may well be, of course, that a district court, in the case of a long-entrenched dual school system, will not find it easy to conduct the factual investigation that *Dayton I* contemplated, i.e., to "determine how much incremental segregative effect" the violation has had on the racial distribution of the school population (433 U.S. at 420).<sup>6</sup> The "incremental segregative effect" formula, however, was simply an application to the facts of *Dayton I* of general remedial principles enunciated by the Court earlier and reaffirmed in that case. In this sense, "the remedial limits imposed by [*Dayton I*]" (83-1721 Pet. App. 32a n.10) are not confined to cases of isolated violations, or even to cases of school desegregation generally, but are "fundamental limitations on the remedial powers of the federal courts" (*General Building Contractors*, 458 U.S. at 399 (quoting *Hills v. Gautreaux*, 425 U.S. at 293)). This Court reaffirmed the applicability of those limitations to cases of officially-maintained dual school systems in *Columbus Board of Education v. Penick*, 443 U.S. 449, 456-457 & n.5, 465-466 (1979), noting that *Dayton I* had "reiterated the accepted rule that the remedy imposed by a court of equity should be commensurate with the violation ascertained" (443 U.S. at 465). Although the extent of the violation shown on the record in *Dayton I* differs from that here, the principles of *Dayton I*—particularly its requirement

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<sup>6</sup> The record before this Court in *Dayton I* revealed only isolated instances of segregative activity. See 433 U.S. at 410 and pages 20-21, *supra*.

that desegregation remedies be predicated on careful and detailed findings of fact—are fully applicable in this case.

2. We agree with the dissenters below that the district court failed to make the kind of factual findings required by *Dayton I*, and that the court of appeals, in the absence of such findings, erred in approving against the State the remedy that it did. The only constitutional violation the State has been found to have committed is an intradistrict violation—the failure to dismantle the dual school system in the City of St. Louis. In earlier stages of the litigation (see pages 4-6, *supra*), the State was ordered to right that wrong by funding half the cost of a systemwide plan (involving mandatory intradistrict transfers and remedial education programs) and by funding the full cost of the 12(a) plan (involving voluntary interdistrict transfers and additional remedial programs). The district court found that these measures were “directly related to remedying racial segregation in St. Louis” and were “conducive to obtaining a proper level of constitutional compliance” by the State (81-2022 Pet. App. A106, A108).

The remedy involved here, by contrast, was decreed in the interdistrict phase of the case, and was designed to settle plaintiffs’ charges of interdistrict violations, not only by the State, but also by the 23 suburban districts. Since the State did not consent to that settlement, funding responsibilities could be imposed upon it only if its liability was first determined. The district court, however, made no finding that the State had committed any interdistrict violation, or that the State’s intradistrict violation had any interdistrict effects (see *Milliken I*, 418 U.S. at 745). It made no finding as to the relative strength

of plaintiffs' charges against the suburban districts and the State. And it made no finding that there existed any other circumstances warranting imposition on the State of remedial costs beyond those it had already been ordered to bear in the intradistrict phase of the suit. The district court, in short, made no findings that could enable it to "tailor 'the scope of the remedy' to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the State's intradistrict violation, the only constitutional violation the State had been found liable for. The "scope of the remedy," rather, was dictated by other parties to the lawsuit, who alleged (or faced allegations of) interdistrict wrongdoing, in a settlement to which the State did not consent, and in circumstances that created no incentives at all to "tailoring" the remedy against the State.

Besides failing to make the necessary findings, the district court did not even conduct the type of proceeding that would have afforded the State a realistic chance to be heard concerning the remedial costs that it could properly be forced to bear. The only hearing the district court held in this respect was a hearing to determine whether the settlement met the standards for approving class action settlements under Fed. R. Civ. P. 23, and this hearing focused almost exclusively on the settlement's fairness to the plaintiff class (see 83-1721 Pet. App. 108a-119a). Although the State was permitted to voice objections to the funding obligations proposed to be placed upon it (*id.* at 113a), the hearing was not designed to permit a defense against plaintiffs' charges of interdistrict wrongdoing. And the State was given no opportunity to build a record concerning the extent of its intradistrict constitutional violation, the effects flowing from that violation, or the magnitude of the cost that



it could reasonably be expected to bear in order to correct its wrong.<sup>7</sup>

The court of appeals attempted to salvage the settlement by paring away some of its more extravagant growth. But while that court could offer its conclusions that there was "adequate support in the record" for some provisions (*e.g.*, 83-1721 Pet. App. 54a, 55a) and that "the record [did not] sufficiently support[]" others (*e.g.*, *id.* at 44a, 56a), those conclusions are no substitute for careful findings of fact by "[t]he District Court[] in the first instance" (*Dayton I*, 433 U.S. at 419). This Court emphasized in *Dayton I* that an appellate court is not at liberty to fill by intuition the gaps in a record; it may set aside "the findings of the district court [as] clearly erroneous" or it "may accept that court's findings of fact but reverse its judgment because of legal errors"

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<sup>7</sup> The district court sought to rationalize its order that the State fund the settlement by asserting that "[t]he sole purpose for the expenditure of funds \* \* \* is to carry out the constitutional responsibility to remove the vestiges of a segregated school system," and that "[i]n no way should any funding provisions \* \* \* be construed to authorize expenditures unrelated to the City Board's desegregation obligations under the Constitution" (83-1721 Pet. App. 128a-129a). But these unsupported conclusions do not amount to the "complex factual determinations" mandated by *Dayton I* as a predicate for such sweeping relief (see 433 U.S. at 420), and a comparison with the record before the Court in *Milliken II* highlights this inadequacy. The district court there had made extensive and elaborate findings to demonstrate that each component of the desegregation plan was "essential for a school district undergoing desegregation" (402 F. Supp. 1096, 1118 (E.D. Mich. 1975), *aff'd* 540 F.2d 229 (6th Cir. 1976), *aff'd* 433 U.S. 267 (1977)), and this Court said that the record compelled it "to conclude that the decree before [it] was aptly tailored to remedy the consequences of the constitutional violation" (433 U.S. at 287).



(433 U.S. at 417-418). Here, as in *Dayton I*, "the Court of Appeals did neither" (*id.* at 418).<sup>8</sup>

3. Because it lacked the factual findings called for by *Dayton I*, the court of appeals erred in approving as a remedy against the State, and in ordering the State substantially to fund, each of the three major components of the settlement agreement—the inter-district transfer plan, the quality education provisions, and the capital improvements program:

a. The court of appeals concluded that the inter-district transfer plan "was closely tailored to the nature and scope" of the intradistrict violation that the State had earlier been found to have committed (83-1721 Pet. App. 31a). It based this conclusion, not upon its review of facts in the record or of any findings by the district court based on that record, but upon the propositions that "the State's presence in public education is immense" and that the State had failed to dismantle the dual school system in St. Louis (*id.* at 32a). This was not the sort of remedial review procedure that *Dayton I* prescribes.

Aside from the absence of trial court findings, the circumstances under which the interdistrict plan was developed should have suggested to the court of appeals that the plan was not in fact "closely tailored to the nature and scope" of the State's intradistrict violation. That plan was intended to settle plaintiffs' interdistrict claims, and, as Judge Bowman aptly said, "it would be a most remarkable coincidence if a plan [so] intended \* \* \* was at the same time prop-

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<sup>8</sup> This case, like *Dayton I*, may be "every bit as important for the issues it raises as to the proper allocation of functions between the district courts and the courts of appeals within the federal judicial system" (433 U.S. at 409) as it is for the substantive remedial questions it presents.

erly tailored to cure only the effects of the intradistrict violation" previously found (83-1721 Pet. App. 92a). The plaintiff class was defined by reference to the St. Louis metropolitan area (*id.* at 142a), and the agreement recites that the purpose of including magnet schools was "[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area" (*id.* at 173a). The settlement plan, finally, was negotiated by the 23 suburban school districts who were the State's co-defendants and who, like the State, had been charged with intradistrict and interdistrict violations. The settlement they negotiated virtually absolved them of liability while requiring them to pay nothing. These circumstances again should have suggested to the court of appeals that the financial burden of the interdistrict transfer plan was not "closely tailored" to remedy a violation *by the State*, much less to remedy the *intradistrict* violation that the State had previously been found to have committed.

For these reasons, the court of appeals had no basis in the record for ordering the State to fund any part of the interdistrict transfer plan, beyond the limited part of the plan that merely subsumed the remedial obligations imposed on the State in earlier stages of the litigation. The district court had found that the remedial measures previously imposed were "conducive to obtaining a proper level of constitutional compliance" by the State (81-2022 Pet. App. A106). In the absence of proof that the State had committed an interdistrict violation, that its proven intradistrict violation had interdistrict effects, or that the previously-ordered remedial measures were demonstrably inadequate, the court of appeals lacked authority to require the State to fund a settlement designed to achieve desegregation throughout the St.

Louis metropolitan area. See *Milliken I*, 418 U.S. at 745.

b. The absence of adequate factual findings likewise infects the court of appeals' funding order respecting the quality education provisions. The court attempted somewhat to streamline this part of the settlement by reference to whether or not it found "adequate support in the record" for particular items (83-1721 Pet. App. 54a-56a). But "[b]ecause of the lack of appropriate inquiry and fact-finding below, there [was] no jurisprudentially acceptable way" for the court of appeals to determine which of these items were necessary to remedy the State's constitutional violation, and which were not (*id.* at 88a n.1 (Bowman, J., dissenting)).<sup>9</sup>

Faced with the absence of factual findings, the court decided to approve "those programs necessary to permit the city schools to regain, and then retain, their Class AAA status" (*id.* at 54a, 56a). But "a school classification device \* \* \* developed by the State's Department of Education" (*id.* at 91a (Bowman, J., dissenting)) has no constitutional dimension. "Thousands of Missouri school children, over one-quarter of the total number, attend schools that lack Class AAA status" (*ibid.*). The district court made no finding that the St. Louis schools' loss of

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<sup>9</sup> The court of appeals, for example, upheld funding for preschool centers, improved music instruction, audio-visual services, and a "parental involvement" program (83-1721 Pet. App. 56a). But it apparently rejected funding for after-school tutoring, improved science instruction, computer literacy services, and a "student leadership" program (compare 83-1721 Pet. App. 56a with *id.* at 192a, 249a, 253a, 258a). The court did not explain why the former were "closely tailored" to remedy the State's constitutional violation, whereas the latter were not.

AAA rating was attributable to a constitutional violation by the State, or that those schools would have maintained their AAA rating in the absence of the intradistrict violation previously found. As this Court has repeatedly held, federal court decrees "exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). And the causal link between the violation and the condition sought to be remedied must be based, not on surmise, but on "the kind of factfinding by the district court and review by [the court of appeals] that *Dayton* mandates" (83-1721 Pet. App. 92a (Bowman, J., dissenting)).

c. The absence of adequate findings, finally, seriously infects the court of appeals' funding order respecting the capital improvements program. The settlement agreement did recite that the city schools were "in a severely deteriorated and sometimes dilapidated physical condition" (83-1721 Pet. App. 195a). But the district court did not find that this condition was attributable to a violation of the Equal Protection Clause, much less to a violation committed by the State. Indeed, the settlement agreement recites that the capital improvements were needed "to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process" (*id.* at 195a). In their interdistrict complaints, of course, plaintiffs alleged that the city schools' deterioration was caused in part by "discriminatory funding decisions" and by "discriminatory allocation of resources" (C.A. App. 79). But these allegations were never tried. The facts developed in a trial might show that black and white schools in St. Louis are equally dilapidated, and that this generalized condition is attributable to

voters' refusal to approve school bond issues (see 83-1721 Pet. App. 83a, 281-282a) or to the City Board's neglect of its "responsibility for maintenance of the schools' physical plant" under local law (*id.* at 83a (Gibson, J., concurring in part and dissenting in part)). In ordering the State to fund half the capital improvements in the absence of factual findings linking that remedy to the State's wrong, the court of appeals again ignored the mandate of *Dayton I.*

4. At certain points in its petition (83-1721 Pet. 11, 17, 22-23), the State apparently seeks to deduce from *Milliken I* a per se rule that a defendant can never be required to pay for desegregation relief employing interdistrict remedial techniques, even if participation in that remedial program is voluntary on the part of all others involved, unless such defendant is shown to have committed an interdistrict violation, or an intradistrict violation with interdistrict effects. This is essentially the contention that the State previously made (81-2022 Pet. 7-13) when seeking review of the order requiring it to fund the 12(a) voluntary interdistrict plan (see 677 F.2d at 630 and pages 4-7, *supra*), and certiorari on that question was denied (459 U.S. 877 (1982)).

We have already expressed our disagreement with that contention (81-2022 Br. in Opp. 8 & n.10). In our view, *Milliken I* establishes no such per se rule. To be sure, once a court under *Milliken I* tailors a desegregation remedy to cure the intradistrict violation, and ascertains the cost of that remedy, that cost sets the limit of the defendant's financial liability for that violation. Consistently with *Milliken I* and *Dayton I*, however, an intradistrict violator can be ordered to fund a remedy incorporating interdistrict remedial techniques, provided (1) that participation in that program is voluntary on the part of all others



concerned, and (2) that the aggregate cost assessed against the intradistrict violator is "narrowly tailored" to—*i.e.*, does not exceed the amount appropriate to redress—the intradistrict violation shown. The error here, as discussed above (see pages 23-30, *supra*), was that the courts below made no effort thus to tailor the remedy assessed against the State.

5. The question presented is by no means unimportant. Although the choice of remedy in a school desegregation case involves factual complexities, the court of appeals' error—its failure to recognize the import of *Dayton I*, and its consequent failure to remand for the kind of factfinding *Dayton I* requires—is neither complicated to state nor difficult to correct. The Court has granted certiorari before to consider the fit between remedy and wrong in school desegregation cases, and the court of appeals' opinion suggests to us the appropriateness of revisiting that area now.

It is of course true that the question presented boils down to a question of who shall bear the cost. That question, however, is not a trifling one for the State, which will be required by the decision below to divert several hundred million dollars "from taxpayers or other competing programs (including other needy school districts) to the beneficiaries of this plan" (83-1721 Pet. App. 88a (Bowman, J., dissenting)). Our experience, both in this case and in other recent desegregation cases, suggests that racial hostility is gradually—and fortunately—diminishing as an obstacle to agreement, leaving allocation of a cost as a major, if not the most important, issue. And the allocation of costs inevitably affects the size and shape of the remedy itself, for litigants like the suburban districts here will have little hesitation in assenting to desirable programs, however unnecessary to re-



dress a prior constitutional violation, if they are not required to pay for them.

The question presented is also of importance to the United States. The St. Louis desegregation plan—particularly its reliance on voluntary measures—is in many respects a model that we would encourage others to follow, and we wish it to be a model of fairness to all concerned. While the United States is not directly affected in a monetary sense by the decisions below, the potential effect of those decisions therefore does concern us.<sup>10</sup>

Despite the importance of the question presented, we have some doubt whether the case warrants plenary review. If the Court agrees with us that further proceedings and factual findings are required in this case, the Court may wish to grant the State's petition (at least as to the first question presented therein),<sup>11</sup>

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<sup>10</sup> The court of appeals earlier rejected plaintiffs' contentions that the United States, although nominally an amicus curiae and later a plaintiff-intervenor, had "contributed to the segregation of the St. Louis school district" and should be required "to pay a substantial portion of the cost of integrating [it]" (667 F.2d at 647, 653-654). Although no relief was decreed directly against the United States, the government did provide "a substantial portion of the funding" for desegregation in St. Louis (see 677 F.2d at 654) through the Emergency School Aid Act, 20 U.S.C. (Supp. V) 3191, for the 1980-1981 and 1981-1982 school years. And while the United States has vigorously resisted contentions that its housing and education programs should render it liable for segregation in the schools, the depth of the government's pockets make it a tempting target for litigants and courts seeking to solve intractable problems by agreeing that each shall get everything he wants and that someone else shall pay the bill. See *United States v. Chicago Board of Education*, 567 F. Supp. 272 (N.D. Ill.), *aff'd in part*, 717 F.2d 378 (7th Cir. 1983).

<sup>11</sup> We believe that the second and third questions presented in the State's petition, to the extent that they raise issues not

summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I*. We believe that such disposition would not endanger the prospects for a prompt and fair settlement of this litigation, and we share Judge Bowman's hope that the parties would "resume their negotiations and achieve a settlement agreement to which all could assent" (83-1721 Pet. App. 94a). Alternatively, if the Court believes that the questions presented can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

6. None of the questions presented in the other two petitions merits this Court's review. The City of St. Louis, petitioner in No. 83-1386, contends that the decision below places improper restrictions on the City Board's taxing prerogatives in connection with the latter's funding obligations under the desegregation decree. Although the district court's original funding order was problematic in this respect, we think that the court of appeals fully cured the problem. It held that the district court had erred in enjoining a scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings demonstrating their necessity (*id.* at 66a). To prevent disruption of the school system's finances, the court of appeals, in the exercise of its equitable discretion, did allow the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a). But the question whether that discretion was properly exercised

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previously considered by the Court in the State's earlier petitions for certiorari (see 80-2152 Pet. i, 81-2022 Pet. i, and pages 30-31, *supra*), are fairly comprised within the first question presented here.

does not merit this Court's review, particularly since the 1983-1984 school year is now over. Petitioners' challenges to the district court's authority to issue future orders affecting the City Board's tax rate (83-1386 Pet. 19-21) are premature.

The North St. Louis Parents, petitioners in No. 83-1838, are an association of black parents whose children attend public schools in North St. Louis. Their motion to intervene in the proceedings below was denied (83-1838 Pet. 3), but they filed written objections to the proposed settlement in the district court (*ibid.*). They contend that their objections were ignored (*id.* at 3-4). The district court noted that it had considered numerous oral presentations (83-1721 Pet. App. 113a-114a) and 42 written presentations (*id.* at 114a) from various individuals and groups supporting and opposing the settlement. It noted that it had "considered all statements presented by members of the public" and had concluded that "[t]he amount and type of opposition \* \* \* [was] not overwhelming in the light of the scope and notoriety of this lawsuit" (*id.* at 114a, 115a). There is no reason to believe that the district court failed to consider petitioners' written comments.

## CONCLUSION

The petitions in Nos. 83-1386 and 83-1838 should be denied. If the Court agrees with us that further proceedings and factual findings are required in this case, it may wish to grant the petition in No. 83-1721 (at least as to the first question presented therein, see pages 32-33 note 11, *supra*), summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I.* Alternatively, if the Court believes that the case can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

Respectfully submitted.

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JULY 1984

**Supreme Court of the United States**

OCTOBER TERM, 1983

Supreme Court, U.S.  
I L E D

AUG 2 1984

RONALD A. LEGGETT, *et al.*,  
STATE OF MISSOURI, *et al.*,

ALEXANDER L. STEVAS  
CLERK

and

NORTH ST. LOUIS PARENTS AND CITIZENS FOR  
QUALITY EDUCATION, *et al.*,

v.

*Petitioners;*

CRATON LIDDELL, *et al.*,

*Respondents.*

On Petition for a Writ of Certiorari to the United States  
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## QUESTIONS PRESENTED

1. Whether a court order pursuant to *Hills v. Gautreaux*, 425 U.S. 284 (1976), requiring the State to fund voluntary interdistrict transfers between the City and consenting suburban districts in order to help remedy the *de jure* segregated school system which the State has been found guilty of creating and helping to maintain in the City, presents an issue warranting review, particularly where the Court of Appeals has twice approved similar orders calling for the funding of such voluntary transfers and this Court has twice denied certiorari.

2. Whether a court order requiring the funding of compensatory education and other remedies in order to help eliminate the vestiges of a *de jure* segregated school system, based upon a detailed review of the particular facts in the record of this case and pursuant to this Court's decision in *Milliken v. Bradley*, 433 U.S. 267 (1977), presents an issue warranting review.

3. Whether an appellate court ruling which holds that a district court order deferring a tax rate decrease must be dissolved unless further proceedings demonstrate that such a deferral is the only way to fund a remedy for a constitutional violation presents an issue warranting review simply because the Court of Appeals continued the deferral in effect as an interim measure for the duration of the 1983-84 school year, in accord with this Court's prior decisions concerning interim remedies.

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# Supreme Court of the United States

OCTOBER TERM, 1983

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Nos. 83-1386, 83-1721 and 83-1838

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RONALD A. LEGGETT, *et al.*,  
STATE OF MISSOURI, *et al.*,

and

NORTH ST. LOUIS PARENTS AND CITIZENS FOR  
QUALITY EDUCATION, *et al.*,

v.

*Petitioners,*

CRATON LIDDELL, *et al.*,

*Respondents.*

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On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit

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## RESPONDENTS' BRIEF IN OPPOSITION

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Petitioners, the City of St. Louis and certain City officials (hereinafter "City"), the State of Missouri and certain State officials (hereinafter "State"), and the North St. Louis Parents and Citizens for Quality Education and certain members of that association (hereinafter "Association"), have asked this Court to grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit *en banc*, entered on February 8, 1984. The City and State Petitioners challenge the provisions for financing a settlement agreement entered into by black plaintiffs as class representatives, the Board of Education of the City of St. Louis, and all twenty-three St. Louis County school districts. The agreement was approved by the District Court on July 5, 1983. Acting on the basis of existing findings of liability against the State of Missouri and the City Board, the District Court also entered an order to fund the agreement. The Dis-



trict Court's order was approved with modifications by the Court of Appeals.<sup>1</sup> The voluntary desegregation plan embodied in the agreement has been operating successfully since September, 1983.

On three previous occasions, this Court has denied requests to review earlier decisions in this case raising most of the same issues which Petitioners present here. Because the decision below is correct and does not raise any questions warranting review by this Court, Respondents Craton Liddell, *et al.* (hereinafter "Liddell Respondents"), Respondents Earline Caldwell, *et al.* (hereinafter "Caldwell Respondents"), Respondents Board of Education of the City of St. Louis, Missouri, its members, officers, and administrators (hereinafter "City Board"), the St. Louis County school district Respondents listed herein, and Respondent St. Louis Teachers Union urge this Court to deny the pending petitions.

### STATEMENT OF THE CASE

The "Statement of the Case" set forth in the State's petition implies that the courts below imposed on an innocent state government the obligation to fund a massive, mandatory cross-district busing order for the purpose of ensuring a better racial balance in a unitary school system. The City's petition further suggests that the courts below ordered a tax increase to help finance the plan.

In fact, however, the State is not innocent, the City schools are not unitary, the desegregation plan is not

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<sup>1</sup> The Eighth Circuit's opinion is reported at 731 F.2d 1294 and is reprinted in Appendix ("City App.") K to the Petition for a Writ of Certiorari filed by the City ("City Pet.") and in Appendix ("State App.") A to the Petition for a Writ of Certiorari filed by the State ("State Pet."). The decision of the District Court which was reviewed by the Eighth Circuit is reported at 567 F. Supp. 1037 and is reprinted in City App. A and in State App. B. A supplemental order issued by the Eighth Circuit on March 5, 1984 is reported at 731 F.2d 1336 and is reprinted in Appendix B to the Supplemental Brief of the City.

mandatory, and no tax increase was ordered. What in fact happened below was that the State—which had been found liable after trial, along with the City Board, for creating, maintaining, and failing to dismantle a *de jure* racially dual school system in the City of St. Louis whose vestiges remain unliquidated today—was ordered to help fund a voluntary desegregation plan worked out between the City Board and all 23 surrounding St. Louis County school districts. The plan gives black students attending the remaining unconstitutionally segregated schools in the City a choice between volunteering to attend majority white schools in county districts or schools in the City that are free to the maximum extent practical from the vestiges of past discrimination. No child will be forced to be “bused” anywhere. Contrary to the impression left by the City, neither the Court of Appeals nor the District Court ordered the City Board or any other entity to increase the tax rate previously approved by the voters. Instead, both courts specifically held that no court-ordered tax increase would be proper unless and until it is proven essential to remedy unconstitutional segregation and its vestiges. These facts, along with the other relevant facts in this case, are set forth in more detail below.

#### **The Establishment of State and City Board Liability for School Segregation in St. Louis**

In 1980, the Eighth Circuit held that the State and the City Board had failed to discharge their constitutional duty to eliminate the vestiges of the pre-1954 *de jure* racially dual school system in the City of St. Louis. The court found that, as a consequence of the constitutional violation, 77% of the City schools remained more than 90% one-race. *Adams v. United States*, 620 F.2d 1277, 1285 (8th Cir.) (*en banc*), *cert. denied*, 449 U.S. 826 (1980). The court’s ruling was based upon an extensive record compiled during lengthy litigation in the District Court, including over 7,000 pages of transcript and some 1,200 exhibits. Both the City Board and the

City of St. Louis, as well as the State, participated as parties in that trial. *Id.* at 1283 n.5.<sup>2</sup> The 23 St. Louis County school districts were not parties at that time. This Court denied a petition for a writ of certiorari. *Adams v. United States*, 449 U.S. 826 (1980).

The Court of Appeals' 1980 opinion specifically held that the State played a significant role in the creation and maintenance of segregation within the City of St. Louis. "Separate schools were maintained by the St. Louis Board of Education pursuant to [state] legislation and the state constitution." *Id.*, 620 F.2d at 1280. A series of state laws and constitutional provisions had created the "state-mandated segregated system," and a number of these provisions remained on the books after 1954, some as late as 1976. *Id.* at 1281, 1280. In addition, the court noted that "discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri" prior to 1954, which "intensified racial segregation" in St. Louis. *Id.* at 1291 n.21. The court held that after 1954, the State failed to take "prompt and effective steps" to dismantle the dual system, and the St. Louis City schools remained segregated. City App. K at p. A-408c.

The Eighth Circuit's 1980 opinion ordered the District Court to implement a "system-wide" remedy for the "system-wide" constitutional violation, including mandatory student reassignments. *Adams v. United States*,

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<sup>2</sup> Prior to trial, the State was added as a defendant and the City was permitted to intervene as a separate party. Under Missouri law, respondent City Board is an independent, elected public body which has its own taxing authority and sets its own tax rate for school purposes, subject to numerous restrictions imposed by State law. See Mo. Rev. Stat. § 164.011; Mo. Const. art. X, § 11(c). Although the City of St. Louis shares boundaries, taxpayers, and constituents with the City Board, it is a separate political entity from the City Board and is separate both geographically and politically from St. Louis County. Once the City Board sets its tax rate, the City's role is limited to the ministerial function of collecting taxes on behalf of, and distributing revenues to, the City Board.

*supra*, 620 F.2d at 1291, 1295. The Court of Appeals recognized, however, that any feasible remedy limited to mandatory reassignment could not effectively desegregate the schools and remove the vestiges of the dual system. *Id.* at 1296. The court found that a so-called "racial balance" plan, which would have required virtually every St. Louis City school to mirror the racial composition of the system as a whole, was impractical in light of the District Court's finding that its probable result "would be an all-black school system in a few years." *Id.* at 1295. *Accord*, City App. K at p. A-416-417. At the same time, the court noted that under any of the available alternatives, some black St. Louis students would remain in one-race schools. *Id.* at 1296. The appellate court accordingly directed the trial judge to consider the use of other remedial techniques to provide relief to black St. Louis students, including the implementation of compensatory and remedial educational programs pursuant to *Milliken v. Bradley*, 433 U.S. 267 (1977) ("*Milliken II*"), and voluntary student exchanges with suburban school districts. *Adams v. United States*, *supra*, 620 F.2d at 1296-97.

### **The District Court's 1980 Findings and Order**

On remand, the District Court conducted additional hearings, made supplemental findings, and issued a desegregation order based on a plan developed by the City Board effective for the 1980-81 school year. *Liddell v. Board of Education*, 491 F. Supp. 351 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981). Again, the State participated fully in these hearings. Among its other findings, the District Court specifically held that the State had previously "mandated school segregation," that it "never took any effective steps to dismantle the dual system it had compelled by constitution, statutory law, practice and policy," and that it was a "primary constitutional wrongdoer" with respect to the "segregated conditions in the St. Louis public

schools." *Id.* at 357, 359, 360.<sup>3</sup> The court accordingly ordered the State defendants and the City Board, which had been found to be "jointly and severally liable," each to pay part of the costs of the desegregation plan. *Id.* at 352-53, 357, 359.

In addition to some mandatory reassignment of pupils, the 1980 desegregation plan included magnet schools, improvements in the overall quality of education in the City schools, and the implementation of remedial and compensatory programs for students remaining in primarily one-race schools. *Id.* at 357. Pursuant to the Court of Appeals' mandate to consider techniques for providing additional relief to students remaining in segregated schools, the District Court's order also called for the development of a "voluntary, cooperative plan of pupil exchanges" between the City school district and the surrounding St. Louis County districts. *Id.* at 353 (paragraph 12(a)). The Eighth Circuit affirmed the District Court's order in all respects, and this Court denied certiorari. 454 U.S. 1081 (1981).

### **The Interdistrict Claims and the Further Implementation of the 1980 Order**

In January, 1981, the Caldwell Respondents and the City Board filed motions to add suburban districts to the litigation and to bring claims for interdistrict remedies, and similar pleadings were subsequently filed by the Liddell Respondents. These claims contended that the county districts, in conjunction with the State, had created and perpetuated a racially dual, metropolitan-wide structure of public education justifying the implementation of a mandatory metropolitan desegregation remedy. *See* City App. A, p. A-42-44. These allegations were denied by the defendants.

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<sup>3</sup> Despite these findings by the District Court and the 1980 holding of the Court of Appeals, the State continues to rely in this Court upon the earlier findings in the District Court's 1979 decision, which found neither the State nor the City Board liable for school segregation in St. Louis, even though that decision was reversed by the Court of Appeals. *See, e.g.,* State Pet. at 29 n.28.



While these interdistrict claims were pending, the District Court ordered further implementation of the relief it outlined in 1980 in order to continue the process of dismantling the vestiges of the racially dual school system remaining in the City of St. Louis. See *Liddell v. Board of Education*, 677 F.2d 626, 628 (8th Cir.), cert. denied, 459 U.S. 877 (1982) ("*Liddell V*") (noting that "30,000 black students still attend all-black schools" in St. Louis). This included an order that the State defendants pay transportation and related costs of a voluntary interdistrict transfer plan that had been developed pursuant to paragraph 12(a) of the 1980 order, under which black City students and white county students from districts which chose to take part could participate in voluntary interdistrict transfers. The State defendants protested, claiming that the order violated *Milliken v. Bradley*, 418 U.S. 717 (1974) ("*Milliken I*"), and that sufficient findings of State liability had not been made. As in 1981, the Eighth Circuit rejected these arguments on the basis of the established liability of the State defendants for segregation within the City and on the authority of *Hills v. Gautreaux*, 425 U.S. 284 (1976). *Liddell V*, 677 F.2d at 630.<sup>4</sup> As in 1981, this Court denied certiorari. 459 U.S. 877 (1982).

### **The Settlement Agreement**

Shortly before trial of the interdistrict claims in February, 1983, the parties announced that, with the as-

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<sup>4</sup> The Court of Appeals also held that the established liability of the State defendants and the City Board permitted the District Court to require them to take additional steps to "help eradicate the remaining vestiges of the government-imposed school segregation in city schools, including actions which may involve the voluntary participation of the suburban schools." *Id.* at 641. The court noted that such steps could include, for example, additional financial incentives for county districts to participate in voluntary interdistrict programs, more magnet schools to attract county students, and improvements in the quality of education in the remaining all-black City schools. *Id.* at 641-642. All of the foregoing elements were included in the Settlement Agreement approved below.



sistance of a court-appointed special master, an Agreement in Principle had been reached to settle the inter-district claims against the 23 St. Louis County districts.<sup>5</sup> A proposed Settlement Agreement was filed on March 30, 1983, and was accepted by the three groups of plaintiffs in the interdistrict phase of the case—the City Board, Liddell and Caldwell Respondents—and by all 23 St. Louis County school districts.<sup>6</sup>

The Settlement Agreement is designed to provide further relief for black students attending one-race schools in the City of St. Louis. It contains desegregation measures that build upon the paragraph 12(a) voluntary interdistrict transfer plan and the 1980 desegregation order.<sup>7</sup> It also implements some specific steps which the Eighth Circuit suggested in its 1982 opinion were justified in view of the established liability of the State and

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<sup>5</sup> The City asserts that it was “excluded” from the settlement negotiations. City Pet. at 3. There is no support in the record, however, for this claim, and the City never raised it below. Nor is there any indication that the court-appointed special master, under whose auspices the negotiations took place, would have rejected a request by the City to participate actively. In fact, several months before the case was settled, the City sought unsuccessfully to withdraw altogether from the case. See Order of December 29, 1982 [H(1870)82]; City App. A at p. A-10-11. The State also participated actively in the settlement negotiations, although it ultimately decided not to sign the Settlement Agreement. See Transcript of Fairness Hearing of May 13, 1983 at 6 (statement of Assistant Attorney General Marshall) (stating that State defendants’ “input was of some assistance” in negotiations).

<sup>6</sup> At the time the Settlement Agreement was filed, St. Louis County also informed the District Court that, assuming the Agreement was acceptable to the county school districts, the county had “no objection that the Settlement Agreement as drafted be implemented according to its terms.” See Position of St. Louis County Government Defendants Regarding Settlement Agreement [H(2239)83] (filed April 4, 1983) at 2. The county has now contradicted its previous position in its brief filed with this Court supporting the City’s petition for a writ of certiorari.

<sup>7</sup> At the time of the Settlement Agreement, 15 of the 23 St. Louis County school districts were participating in the paragraph 12(a) voluntary plan.

the City Board. *Liddell V*, 677 F.2d at 641-42; see note 4, *supra*.

Contrary to the State's implication that the agreement required or "called for busing more than 15,000 students," State Pet. at 5, the agreement is completely voluntary and no student is required to participate. It is designed to give all black students attending one-race schools in the City a choice between transferring to predominantly white schools in the county districts or attending schools in the City in which the vestiges of segregation have been removed to the maximum extent practical by *Milliken II*-type ancillary relief. Like the paragraph 12(a) plan, the agreement provides for voluntary interdistrict transfers between City and county schools. Each county district which receives enough transfers within five years to satisfy specified desegregation goals will obtain a final judgment. To attract suburban students to the City, and to provide additional relief for black City students, the agreement creates additional magnet schools and general improvements in the quality of education in the City schools, similar to those contained in the 1980 desegregation order. As in the 1980 order, the agreement also provides for special educational improvements for black City students remaining in one-race schools. See City App. K, p. A-410.

### **The District Court's Order**

The Settlement Agreement was conditional upon court approval pursuant to Fed. R. Civ. P. 23(e), and upon a court order requiring the parties previously found liable—the State and the City Board—to finance the plan in order to provide further desegregation relief. See Settlement Agreement [H(2217)83] at X (A), (B) (3), City App. C at p. A-125, 127. Beginning on April 28, 1983, the District Court conducted a five-day hearing concerning the fairness, reasonableness, and adequacy of the Settlement Agreement. This hearing also considered the extent to which the State and the City Board could be ordered to fund the Settlement Agreement on the basis of

their proven liability for intradistrict segregation. Extensive evidence was presented at the hearing concerning the importance of the compensatory and remedial educational programs and other components of the plan to the achievement of successful desegregation.<sup>8</sup> In addition to oral testimony, the court received 42 written statements from interested persons, proposed findings from the parties, and public statements from community leaders and groups. These included favorable statements concerning the plan issued by the presidents of St. Louis colleges and universities, numerous area religious leaders, both United States Senators from Missouri, and a number of education and civic groups.<sup>9</sup> The State and the City presented evidence seeking to attack the proposed financing of the plan and claiming that the relief to be ordered against

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<sup>8</sup> See, e.g., Transcript of April 28, 1983 Fairness Hearing ("April 28 Tr.") at 1-40 (testimony of Dr. James DeClue); *id.* at 1-70-80, 83-85 (testimony of Dr. Robert Dentler); *id.* at 1-135-140 (testimony of Dr. Jerome Jones); May 13 Tr. at 44-46, 54 (testimony of Dr. Evelyn Luckey). Dr. Dentler testified that the plan would have been "flawed beyond hope" without such compensatory and remedial educational programs. April 28 Tr. at 80. The State itself agreed that two specific programs, the "early childhood program" and the "instructional management system," had been "advocated" by its own Department of Elementary and Secondary Education and "should rightfully be part of this quality education package." May 13 Tr. at 9 (statement of Assistant Attorney General Marshall). In addition, the District Court had previously received testimony concerning the importance of such programs during earlier phases of the case, including from witnesses proffered by the State defendants. See, e.g., Transcript of March 1, 1982 12(c) hearing ("March 1 12(c) Tr.") at 23-24, 40-41 (testimony of former St. Louis School Supt. Robert Wentz); *id.* at 113 and March 3 12(c) Tr. at 145 (testimony of Dr. Gordon Foster); March 2 12(c) Tr. at 18-19 (testimony of Dr. Robert Dentler); *id.* at 160, 172-173 (testimony of Dr. Albert Walker, witness for the State); March 24 12(c) Tr. at 52 (testimony of Dr. Herbert J. Walberg, witness for the State); *id.* at 128-129 (testimony of Dr. Gary Orfield).

<sup>9</sup> See Joint Response of City Board, Caldwell and Liddell Plaintiffs to Comments from the Public [H(2281)83] (filed April 11, 1983) at 2-4 and App. A-G; April 28 Tr. at 1-37-38; May 13 Tr. at 60-61; H(2539)83 (filed July 27, 1983).

the State was not warranted by the liability proven.<sup>10</sup> In addition, the Association presented written and oral objections concerning the adequacy of the plan's compensatory and remedial educational provisions and the allegedly disparate impact of the plan on some class members.<sup>11</sup>

In its order of July 5, 1983, the District Court approved the Settlement Agreement for implementation beginning in September, 1983. On the basis of the prior finding of intradistrict liability, the court also ordered the State defendants and the City Board to finance the plan, explicitly stating that the "sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of [the] segregated school system" in the City of St. Louis which they had created and perpetuated, and that "all proposed expenditures must be justified on this basis." City App. A, p. A-33. The July 5 order provided that the State defendants would be responsible for the costs of voluntary interdistrict transfers, magnet schools, and certain part-time and alternative integrative programs, plus one-half the cost of the compensatory and remedial programs in the City schools and capital improvements pursuant to the plan. See City App. A, p. A-2-3.

In its July 5 order, the District Court held that the City Board was required to fund the other half of the costs of the compensatory and remedial programs and capital improvement components of the plan. *Id.* Evidence was presented that the City Board would be unable both to maintain its regular educational programs and to comply with its desegregation responsibilities unless additional revenues were made available.<sup>12</sup> The court

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<sup>10</sup> See, e.g., May 13 Tr. at 8-9 (statement of Assistant Attorney General Marshall); *id.* at 94-95 (testimony of George Otte, witness for the City); May 16 Tr. at 165 (testimony of Otis Baker, witness for the State).

<sup>11</sup> See April 29 Tr. at 3-20-31.

<sup>12</sup> See April 28 Tr. at 140-141, 144-145, 147 (testimony of St. Louis School Supt. Jones). State law severely limits the City

thus ordered the City Board to defer a reduction in its operating tax levy which had been scheduled as a result of the passage of Proposition C (Mo. Rev. Stat. § 164.013) insofar as necessary to meet the City Board's desegregation obligations. See City App. A, p. A-4. The court's order thus maintained—not increased—the existing tax rate in the City. The court indicated it would consider an appropriate order to raise additional revenue, but only if proven necessary. See City App. A, p. A-35.

### **The Court of Appeals' Opinion**

In an *en banc* decision, the Eighth Circuit affirmed the District Court's July 5 Order with substantial modifications. Based upon the previous findings of liability and its earlier decisions, the appellate court upheld the District Court's ruling that the State defendants and the City Board could be ordered to fund the plan to desegregate further the City schools. See City App. K, p. A-407-408. The Eighth Circuit approved the July 5 Order with respect to voluntary interdistrict transfers between the City and the county districts, magnet schools in the City, compensatory and remedial educational programs for one-race schools, and the extension of such programs to the target City schools which became integrated as a result of the 1980 order insofar as necessary to achieve the quality of educational programs required for successful desegregation.

The court declined to approve the District Court's order that the State defendants fund magnet schools in county districts or transfers between one county district and another. It also declined to approve the District Court's order that compensatory and remedial educational

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Board's ability to raise revenues. It requires approval by two-thirds of the City's voters for the issuance of bonds or any tax increase significantly above the current level. See Mo. Const. art. VI, § 26(b); art. X, § 11(c). Indeed, as recently as June 5, 1984, a majority of City voters approved a proposed tax rate increase and bond issue to help fund the desegregation plan, but these proposals failed because they did not receive the two-thirds vote required under State law.



programs be extended to the target City schools which became integrated as a result of the 1980 order where the record did not adequately support the need for such programs to remedy the existing constitutional violation. The appellate court thus effectively eliminated all or part of 13 such programs.<sup>13</sup> Finally, the court held that, although evidence had been presented concerning the need for additional City Board revenues to finance the plan, the lower court had not made a specific factual finding that there were no adequate fiscal alternatives to deferring the property tax reduction. Accordingly, the Eighth Circuit ordered that the reduction take effect in 1984-85 unless such findings are made. City App. K at p. A-455.

Recognizing that its opinion would require modification of the agreement and a reduction in the cost of the plan, the Eighth Circuit required the parties to decide promptly if they wished to continue to participate in the agreement. See City App. K, p. A-408a. All parties did agree to continue with the plan. See Order of March 28, 1984 [H(3000)84]. Despite the claims of the State and the City (see, e.g., City Pet. at 19, State Pet. at 2), the fiscal year 1984 cost of the plan, even if the compensatory and remedial components and other programs approved by the District Court were implemented in full, was budgeted for \$33.4 million. The City Board has

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<sup>13</sup> *Id.* at p. A-407-408, 443-445; City Board's Status Report on its Compliance with the Eighth Circuit's Instructions Pertaining to Quality Education Programs Under Settlement Plan and Request for Reductions in State Payments for 1983-84 [H(3022)84] (filed April 2, 1984) at 4, 6, Attachment 3. Examples of programs which were cut or eliminated for targeted integrated schools include: curriculum supervision; lowering of certain pupil/teacher ratios; and provision of additional counselors for integrated elementary schools. *Id.* In addition, the Court of Appeals imposed cost and related limitations on new part-time integrative programs, the total number of interdistrict transfers, compensatory programs in all-black schools, and capital improvements. The court also required review of proposed future expenditures by a five-person budget committee on which the State is to have two representatives. See City App. K, p. A-434, 442-443, 446-447, 458.



recently estimated that the cost will actually be less than \$27.4 million, of which less than \$18.7 million is to be paid by the State.<sup>14</sup> The State itself has recently stated in the court below that based upon the Court of Appeals' opinion, its "settlement plan budget for fiscal year 1984 should be on the order of \$10.5 million."<sup>15</sup>

### **Experience Under the Settlement Agreement**

While these court proceedings have been pending, the 1983-84 school year began in the City of St. Louis and in St. Louis County. As the Court of Appeals noted, 2,294 black students from the City have been voluntarily

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<sup>14</sup> See Amended Settlement Plan Budget of City Board [H(2878)84] (filed Feb. 1, 1984) at 3-4; City Board's Status Report on its Compliance with the Eighth Circuit's Instructions Pertaining to Quality Education Programs under Settlement Plan and Request for Reduction in State Payments for 1983-84 [H(3022)84] (filed April 2, 1984) at 7, Attachments 1, 2, and 4. The Budget Review Committee recently has recommended (over the City Board's objection) that the State's share be further reduced to approximately \$10.9 million. Budget Review Committee Report on Disputes Concerning 1983-84 Settlement Plan Funding Obligation [H(3150)84] (filed June 13, 1984) at 9. The City Board's estimate and the Budget Review Committee's recommendation do not include costs associated with interdistrict transfers. Those costs will depend upon the precise number of transfer students. Prior to the Court of Appeals' opinion limiting such transfers, the costs were estimated by the signatories to the plan to be about \$7.2 million. See Settlement Plan Summary of Costs (filed with Eighth Circuit Court of Appeals on September 28, 1983). Although no final 1984-85 budget has yet been determined, costs will be somewhat higher next year, in part because one-time start-up and renovation expenditures will be required then for certain magnet school and other programs. See Order of July 12, 1984 [H(3220)84]. Such costs are subject to the budget control procedure established below. Hearings on the 1984-85 budget were underway at the time of the filing of this Brief. See note 13, *supra*.

<sup>15</sup> State Appellants' Response to Caldwell Plaintiffs' Motion for Attorneys' Fees and Costs (8th Cir., filed April 30, 1984) at 5. See also Second Quarterly Progress Report on the Settlement Plan—Financial Advisor's Report [H(3071)84] (April 23, 1984) ("Second Quarterly Report") at 6 (court-appointed financial advisor reporting that "[a]ll data indicate that even recent revised budget appropriations will be underspent this year").

attending predominantly white schools in the county under the plan.<sup>16</sup> Another 389 white county students have voluntarily transferred to City schools. See City App. K, p. A-414. An additional 4,167 students have applied for City to county transfers for the 1984-1985 school year, and another 466 students have applied for county to City transfers for the same year. See Letters from the Executive Director of the Voluntary Inter-district Coordinating Council [H(3256)84] (dated July 18, 1984) and [H(3289)84] (dated July 25, 1984).<sup>17</sup> The Council which helps operate the plan, has reported to the District Court that the program shows every sign of success. "From both the students' as well as the receiving districts' perspectives, indications are that student adjustment has been excellent, programs are being coordinated to meet student needs, and that both student and staff attitudes are positive and receptive." Letter from Executive Director of the Voluntary Inter-district Coordinating Council [H(2729)83] (dated October 7, 1983). Desegregated education is now becoming a reality for the children of the City of St. Louis.

### SUMMARY OF ARGUMENT

The primary arguments raised by Petitioners simply restate claims raised unsuccessfully by the State on prior occasions in this Court and the courts below, claims which this Court has repeatedly declined to review. Contrary to the assertion of the City and State Petitioners, the decision below does not impose a mandatory metropolitan remedy in violation of *Milliken v. Bradley*, 418 U.S. 717 (1974) ("*Milliken I*"). The only mandatory relief ordered was to require the State and the City Board,

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<sup>16</sup> The 15,000 transfer figure contained in the State's Petition at 5 refers to the total number of transfers projected to be reached by the fifth year of the plan.

<sup>17</sup> Early experience under the Settlement Agreement demonstrates that the percentage of white students in the City school system is increasing, reversing a long downward trend. See Seventh Report of the City Board [H(2760)83] (filed October 31, 1983) at 40.

both adjudicated constitutional violators in connection with system-wide segregation in the City of St. Louis, to provide financing for further desegregation relief for City students, in cooperation with county districts which have voluntarily agreed to participate pursuant to the Settlement Agreement. This is fully consistent with *Milliken I* and *Hills v. Gautreaux*, 425 U.S. 284 (1976), because only parties found liable have been compelled to participate, and because the remedy ordered by the District Court is intended to alleviate the remaining vestiges of the dual system in the City of St. Louis for which the State defendants and the City Board have been found responsible. It is also consistent with *Milliken v. Bradley*, 433 U.S. 267 (1977) ("*Milliken II*"), because the Court of Appeals specifically found that the remedies it approved were tailored to the nature and scope of the proven violation: the confinement of black students to inferior quality one-race City schools. The Court of Appeals has properly applied the relevant legal principles to the particular facts in St. Louis.

In addition, the City's petition claims repeatedly that the courts below have somehow engaged in improper judicial levying of taxes to finance the further desegregation relief ordered in St. Louis. This allegation reflects a fundamental misinterpretation of applicable law and of the decisions below. Neither the Court of Appeals nor the District Court ordered the City Board or any other entity to raise its tax rate. Instead, both courts specifically held, pursuant to *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), that no court-ordered increase would be proper unless and until it is proven essential to remedy unconstitutional segregation and its vestiges. While the District Court had ordered the deferral of a scheduled property tax reduction based on evidence that continuation of the present tax rate was necessary to help finance desegregation, the Court of Appeals held that this order must be dissolved unless the District Court makes further explicit findings that such funding is absolutely necessary for effective desegrega-

tion and that no alternative source of funding exists. The Court of Appeals properly allowed the order to remain in force through the end of the 1983-84 school year as an interim measure in order to avoid disruption in mid-year, as this Court has done in numerous school desegregation and other cases.

Petitioners have thus failed to show that the decision of the Eighth Circuit in this case conflicts with any decision of another Court of Appeals or of this Court. *See* Supreme Court Rule 17.1(a), (c). On the contrary, the court's opinion reflects the application of established principles of law to the particular facts of this case, and does not present any issues of general applicability worthy of review by this Court.

#### REASONS FOR DENYING THE WRIT

1. Both the City and the State claim that the decision below "implemented a metropolitan remedy, based on findings that proven violations affected only a single school district." City Pet. at 19. *Accord*, State Pet. at i. This claim echoes the virtually identical arguments unsuccessfully raised by the State in prior arguments to this Court and the courts below. *See* p. 7, *supra*.<sup>18</sup> It also reflects a fundamental misunderstanding of the District Court's order.

Relief was ordered below only against the State and the City Board. Both remain obligated to dismantle the dual system in the City of St. Louis for which they have been found liable. Precisely as with the earlier voluntary

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<sup>18</sup> *See* State's Petition for a Writ of Certiorari in No. 80-7152 (filed June 17, 1981) at 20 (claiming that the "District Court exceeded its authority in ordering the preparation of a plan of voluntary exchanges between the St. Louis School District and nonparty school districts" based on "an intradistrict violation"); State's Petition for a Writ of Certiorari in No. 81-2022 (filed April 30, 1982) at 7 (claiming that lower courts approved "an inter-district remedy without first finding an inter-district violation"). *See also* City App. K at p. A-417-419 (discussing previous unsuccessful State attempts in this Court and the Court of Appeals to attack orders requiring State to fund voluntary interdistrict transfers).

interdistrict 12(a) plan, which the State attacked unsuccessfully in the Court of Appeals and in this Court, the District Court ordered the State and the City Board to help finance and implement a voluntary plan involving the cooperation of suburban districts in order to further remedy school segregation in the City. Indeed, the District Court's order was essentially an expanded version of the previous voluntary plan. Contrary to Petitioners' suggestions, the District Court expressly stated that it was ordering this relief for the "sole purpose" of fulfilling the "constitutional responsibility to remove the vestiges of a segregated school system." City App. A, p. A-33.

As the District Court and the Court of Appeals recognized, this Court's decisions in *Milliken I* and *Hills v. Gautreaux*, *supra*, fully support this order. Unlike *Milliken I*, no relief was ordered against suburban jurisdictions that have not been found liable. See *Milliken I* at 721-722. Instead, as in *Gautreaux*, constitutional violators were required to implement a plan extending beyond the boundaries of a city in order to help relieve segregation found to have been caused by them within the city. *Id.*, 425 U.S. at 297-300 (affirming order requiring Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") to implement a plan which extended beyond the City of Chicago, but which did not require suburbs to participate, in order to help remedy housing segregation caused by HUD and CHA within the city). As in *Gautreaux*, the fact that the wrong committed by the State was within the city does not prevent the courts from ordering relief involving the voluntary cooperation of suburban districts.<sup>19</sup>

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<sup>19</sup> The State's attempt to distinguish *Gautreaux* is unconvincing. HUD and CHA were both found liable for segregated housing violations within the Chicago city limits, just as the State of Missouri and the City Board were found liable for segregated schools within the City of St. Louis. Just as HUD had authority to act beyond the geographical limits of the City of Chicago, the State of Missouri has state-wide responsibility for establishing and maintaining public schools throughout the State. Mo. Const. art. IX § 1(a). Just



The State nevertheless argues that the relief ordered below is improper. Without citing anything in the record, the State asserts that the "numerous . . . one-race schools" in the City of St. Louis may be the result of "a racial distribution caused by personal choices regarding housing or employment or other factors not attributable to proven unconstitutional conduct by the State." State Pet. at 20. This claim is nothing more than a warmed-over version of defendants' previous argument, which was specifically rejected by the Court of Appeals in 1980, that school segregation in the City of St. Louis was caused by factors over which defendants "had no control," such as "discriminatory private policies" and "general population movements unrelated to any specific governmental policies." *Adams v. United States, supra*, 620 F.2d at 1291. Both the Court of Appeals and the District Court found in 1980 that the remaining segregation and one-race schools in the City of St. Louis were a vestige of the *de jure* segregated system and other unconstitutional conduct of the State and the City Board. This Court denied certiorari. See City App. K at p. A-408c-408d; p. 3-6, *supra*.<sup>20</sup> The State's attempt to re-

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as it was appropriate for HUD to be ordered to construct public housing outside the Chicago city limits with the consent of suburban governmental entities in order to help remedy segregated conditions in the city for which HUD was liable, it is appropriate in this case to require the State of Missouri to fund voluntary inter-district transfers outside the City of St. Louis with the consent of St. Louis County school districts in order to help remedy segregated conditions in the City for which the State is liable.

<sup>20</sup> These rulings are consistent with this Court's decision in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18, 26 (1971) ("*Swann*"), where this Court held that the existence of one-race schools establishes a "*prima facie* case of violation of substantive constitutional rights," and that defendants have the burden to establish that such schools are "not the result of present or past discriminatory action." The State's speculation in its petition concerning other possible causes of one-race schools in St. Louis clearly fails to satisfy its burden under *Swann*. See also *Keyes v. School District No. 1*, 413 U.S. 189, 207-213 (1973) (explaining the burden on defendants of justifying the existence of remaining one-race schools).



litigate in this Court this settled factual question does not raise an issue worthy of review.

2. The City, State, and the United States also maintain, as the State has previously argued to this Court, that the remedies ordered below, particularly the compensatory and remedial programs for City schools ordered pursuant to *Milliken II*, exceeded the scope of the constitutional violation proven. Petitioners and the United States have misread the decision below and the relevant case law.

As this Court has explained, a desegregation remedy “does not ‘exceed’ the violation” where it is “tailored to cure the ‘condition that offends the Constitution’”—in this case, the vestiges of *de jure* system-wide school segregation in the City of St. Louis. *Milliken II*, 433 U.S. at 282 (emphasis in original). The Court of Appeals acknowledged and adhered to this principle. It reviewed applicable legal precedents regarding the need for such components in order to overcome “the inequalities inherent in dual school systems,” beginning with this Court’s holding in *Milliken II*. City App. K, p. A-436, 437-38. Based on the extensive evidence presented to the District Court (*see* p. 9-11, *supra*), the Court of Appeals then proceeded to analyze carefully each aspect of the relief ordered. *See* City App. K, p. A-420-448. The appellate court approved only those components which the record demonstrated were necessary to correct the vestiges of the former dual system, namely the remaining one-race, inferior schools in the City. The order below gives each of the 30,000 students attending those schools the choice of attending a magnet school, a regular City school improved by *Milliken II* programs, or an integrated school in a county school district. *See* City App. K, p. A-445, A-460. The Court of Appeals reversed the District Court as to all programs which did not meet this exacting standard, such as student transfers between county districts, county magnet schools, and all or part of 13 components of the compensatory and remedial portion of the plan. *Id.* at A-407; *see* p. 12-13 *supra*. This procedure

conforms precisely to the standards established by this Court. Petitioners and the United States offer no basis for asking this Court to review the Court of Appeals' detailed application of the *Milliken II* standards to the facts of this case.

Contrary to the State's assertion, it is no "curious accident" that the Court of Appeals found that the programs included in the Settlement Agreement as modified (as distinguished from the broader remedies sought in the interdistrict complaints), were tailored to remedy the remaining vestiges of the constitutional violation. See State Pet. at 26. See also Brief for the United States at 23. The parties who negotiated the settlement were keenly aware that they were drafting a plan that had to be sufficiently tailored to the existing intradistrict liability findings to warrant a court order requiring their funding and implementation. For this reason, they drafted the compensatory and remedial education provisions in accordance with similar provisions in the 1980 order. See p. 8, *supra*. The parties also expressly relied upon the 1982 Court of Appeals opinion suggesting the types of additional desegregation relief that could be ordered against the State and the City Board based upon the existing record. See *Liddell V*, 677 F.2d at 641-642, cited at Settlement Agreement [H(2217)83] at X (B) (3), City App. C at p. A-127. Contrary to the argument presented by Petitioners and by the United States, it is thus clear that the remedy has been carefully tailored to the existing intradistrict violation.<sup>21</sup>

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<sup>21</sup> The State further asserts, relying on *United States v. City of Miami*, 664 F.2d 435 (5th Cir. 1981) (*en banc*), that since it is not a consenting party to the Settlement Agreement, the Court may not "approve ramming a settlement" down its throat. State Pet. at 15 n.13. The decision in *City of Miami*, however, is irrelevant to this case. There the court declined to approve that portion of a settlement agreement that affected the rights of a non-consenting third party. In *City of Miami*, unlike this case, there was never any finding of liability on the part of the third party. In contrast, the court here properly ordered the State to fund the Settlement Agreement based on the established findings of State liability for the unconstitutional conditions that the order seeks to remedy.

Petitioners' cramped view of the appropriate nature of desegregation remedies squarely contradicts this Court's prior holdings. This Court has charged state and local authorities with the responsibility to take "whatever steps might be necessary" to eliminate "all vestiges of state-imposed segregation" from the schools. *Swann*, 402 U.S. at 15; accord, *Columbus Board of Education v. Penick*, 443 U.S. 449, 459 (1979) ("*Columbus*"). When such authorities fail to do so, the courts are not limited—as Petitioners assert—to a fanciful and futile effort to try to recreate "things as they would have been." State Pet. at 19. See also City Pet. at 22. As this Court has explained, it is not possible simply "to turn back the clock." *Ford Motor Co. v. United States*, 405 U.S. 562, 573 n.8 (1972). Instead, so long as the objective is to "cure the condition that offends the Constitution," the "scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Milliken II*, 433 U.S. at 281, 282 (approving remedial reading and other compensatory programs despite argument that "the court's decree must be limited to" student reassignments since "the constitutional violation found" was "the segregation of students on the basis of race").<sup>22</sup> Following the example of this Court's decision in *Milliken II* and numerous other appellate court holdings, the court below properly ordered the use of compensatory programs and other relief to remedy the vestiges of the unconstitutional *de jure* segregated system in St. Louis.<sup>23</sup>

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<sup>22</sup> Accord, *Swann*, 402 U.S. at 15. This Court has recognized the same principle in other types of cases involving equitable relief. E.g., *Ford Motor Co.*, 405 U.S. at 573 n.8 (explaining that equitable decrees in antitrust cases should seek to "cure the ill effects of the illegal conduct" and are not limited to "restoration of the *status quo ante*") (emphasis in original).

<sup>23</sup> See, e.g., *Arthur v. Nyquist*, 712 F.2d 809 (2d Cir. 1983), cert. denied, 52 U.S.L.W. 3756 (1984); *Berry v. School Dist. of Benton Harbor*, 698 F.2d 813 (6th Cir.), cert. denied, 104 S. Ct. 236 (1983); *United States v. Texas Educ. Agency*, 679 F.2d 1104 (5th Cir. 1982); *Evans v. Buchanan*, 582 F.2d 750 (3d Cir. 1978) (*en banc*),

The reliance of Petitioners and of the United States on this Court's decision in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) ("*Dayton I*"), to contradict these holdings is misplaced. In *Dayton I*, this Court held that the district court had improperly ordered a system-wide remedy where the violation proven had "included at most a few high schools." *Dayton Board of Education v. Brinkman*, 443 U.S. 526, 540-541 (1979) ("*Dayton II*"). As this Court made clear in *Columbus*, the holding in *Dayton I* is limited to situations where "only a few apparently isolated discriminatory practices had been found," making a systemwide remedy inappropriate. *Columbus*, 443 U.S. at 465-466.<sup>24</sup> In this case, as in *Columbus* and *Milliken II*, the State and the City Board are responsible for systemwide, *de jure* segregation in the City of St. Louis, and the remedy was designed to redress the effect of "[t]he 'condition' offending the constitution." *Milliken II*, 433 U.S. at 282. The ruling in *Dayton I*, where this Court held that it was necessary to define and seek to remedy the incremental effects of specific identifiable constitutional violations, is simply inapplicable.<sup>25</sup> Thus, the findings below met the

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*cert. denied*, 446 U.S. 923 (1980); *United States v. Texas*, 447 F.2d 441 (5th Cir. 1971), *cert. denied*, 404 U.S. 1016 (1972); *United States v. Jefferson County Bd. of Educ.*, 380 F.2d 385 (5th Cir.), *cert. denied*, 389 U.S. 840 (1967).

As the Court of Appeals recognized, Petitioners' heavy reliance on *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973), is misplaced. Where, as here, a case involves "a suspect class (race) and an established constitutional violation (a *de jure* school system)," the courts have "repeatedly endorsed compensatory and remedial efforts to overcome educational inadequacies caused by segregated schools, *Rodriguez* notwithstanding." City App. K, p. A-440 n.7.

<sup>24</sup> Unlike the decisions relied upon by the State, this case involves the vestiges of a state-mandated *de jure* segregated school system, not individual "findings of segregative acts" warranting only limited relief. Compare *Brennan v. Armstrong*, 433 U.S. 672 (1977) (cited at State Pet. at 19).

<sup>25</sup> *Dayton I* similarly does not justify remand to the District Court for additional findings. As discussed at p. 12-13, 20-21,

standards set forth in *Dayton II*, *Milliken II* and *Columbus* and, in any event, under well-established legal principles, the adequacy of those findings does not present a question worthy of this Court's review.

3. The City's claim that the courts below have engaged in "judicial taxation," City Pet. at 10, misconstrues the decisions below. The District Court merely stated that, after future hearings, it would consider as a matter of last resort authorizing a property tax increase in St. Louis if proven essential to ensure adequate funds for desegregation, and the court expressly reserved for a later date the question of whether such an order would be necessary. City App. A, p. A-35. In deference to the applicable principles of comity and federalism, the Court of Appeals also made it clear that such an order would be permissible under *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), only "after exploration of every other fiscal alternative." City App. K, p. A-449. Accordingly, there is no present controversy concerning the propriety of such an order, and any ruling by this Court concerning that issue would be purely advisory.<sup>26</sup> The City's challenge to the validity

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*supra*, the Court of Appeals reviewed in detail each aspect of the relief ordered and made specific findings concerning the remedies it upheld. Contrary to the argument presented by the United States, there was no impropriety in the appellate court's making such factual findings based upon the trial record. Indeed, the findings made by the Court of Appeals in this case were even more detailed than the appellate court findings relied upon by this Court in upholding the system-wide remedy in *Dayton II*. *Id.*, 443 U.S. at 540-541. The United States' suggestion that the Court summarily vacate the decision below and remand for additional findings is simply unrealistic. Such an order would completely and unnecessarily disrupt the voluntary desegregation plan now in effect and would fatally undermine the Settlement Agreement so carefully negotiated among the parties.

<sup>26</sup> This Court has made it clear that it does not issue advisory opinions on hypothetical questions. *Federal Communications Comm'n v. Pacifica Found.*, 438 U.S. 726, 735 (1978). *Accord, e.g., Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956) (noting that this Court "reviews judgments, not statements in opinions").



of a hypothetical future order which may or may not require the raising of additional tax revenues does not warrant review by this Court.<sup>27</sup>

The only action below relating to tax revenues was the decision by the District Court ordering the maintenance of the current St. Louis school tax rate and deferring a scheduled property tax rate reduction to the extent "necessary to fund [the] City Board's constitutional obligation." City App. A, p. A-4. This order was based on testimony that the City Board would be unable to maintain its regular educational programs and to comply with its desegregation responsibilities if the tax rate were reduced. See p. 11-12, *supra*. Although the Court of Appeals recognized that the record in fact reflected such financial

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<sup>27</sup> The City's contention that federal courts may never order taxes to be levied or spent contradicts squarely the previous holdings of this Court. In *Virginia v. West Virginia*, 246 U.S. 565, 591 (1918), this Court held that the existence of the judicial power to resolve a controversy necessarily implies the existence of the power to "enforce the results of its exertion," including, if necessary, a writ of mandamus directing the legislative body to enact and levy a tax to satisfy the judgment. Numerous other decisions of this Court, including *Griffin*, have recognized the federal court's authority to order municipalities to raise and expend tax revenues where necessary to vindicate constitutional rights or fulfill contractual obligations. See *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 681 (1978) (acknowledging long line of cases in which this Court has "vigorously enforced the Contract Clause against municipalities—an enforcement effort which included . . . ordering that taxes be levied and collected to discharge federal-court judgments once a constitutional infraction was found"). Accord, e.g., *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977); *Graham v. Folsom*, 200 U.S. 248 (1906); *Supervisors v. Durant*, 76 U.S. 415 (1869); *Von Hoffman v. City of Quincy*, 71 U.S. 535 (1867). This Court's recognition of the power of federal courts to remedy constitutional violations, including the ultimate power to raise taxes if necessary, is in accord with long-established common law doctrines. See cases cited at City App. K, p. A-449-454. Furthermore, the City's reliance on the doctrine of separation of powers is misplaced. As this Court has held, separation of powers "has no applicability to the federal judiciary's relationship to the States." *Elrod v. Burns*, 427 U.S. 347, 352 (1976) (Brennan, J., announcing the judgment of the Court). Accord, *Virginia v. West Virginia*, *supra*, 246 U.S. at 591.



problems, it held that the District Court should have made an explicit finding that all other fiscal alternatives were insufficient before deferring the rollback. City App. K, p. A-455. Accordingly, the appellate court ruled that the District Court must allow the rollback to take effect in 1984-85 unless such findings are made. *Id.*

Petitioners nevertheless complain because the appellate court in February did not reverse the rollback suspension retroactively to the beginning of the 1983-84 school year. The Court of Appeals, however, was simply applying this Court's consistent holdings that once any legal error has been corrected on appeal, interim measures are permissible in order to avoid disruption even where not consistent with the proper legal result reached on appeal.<sup>28</sup> This principle has been applied by this Court to school desegregation cases as well, including the decision in *Dayton I* relied upon by Petitioners. In that case, even though this Court held that the evidence and findings were inadequate to support the system-wide remedy ordered by the lower courts, the Court approved the continuation of the remedy for the pending and next succeeding school years. *Id.* at 421. Indeed, the appellate court here took a more conservative approach than in *Dayton*, since it held that the deferral may continue only for the remainder of the 1983-84 school year and must

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<sup>28</sup> See, e.g., *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 88 (1982) (staying judgment invalidating Bankruptcy Reform Act in order to avoid "impairing the interim administration of the bankruptcy laws"); *Lemon v. Kurtzman*, 411 U.S. 192, 194 (1973) (holding that district court could permit state to reimburse non-public school for educational services performed prior to decision declaring such payments unconstitutional); *Upham v. Scamon*, 456 U.S. 37, 44 (1982) (permitting use of erroneously ordered reapportionment plan as "interim plan" for next succeeding election); *Mahan v. Howell*, 410 U.S. 315, 332-333 (1973) (upholding interim remedy by district court in voting rights case using multi-member districts which would not have been appropriate as final relief); *Allen v. State Bd. of Elections*, 393 U.S. 544, 571-572 (1969) (refusing to apply voting rights decision retroactively to set aside previous elections conducted in violation of applicable law).

end before the school year beginning in September, 1984, unless specific findings justifying its continuation are made.

Thus, the Court of Appeals announced no new principle concerning federal court authority over state and local taxation. Instead, in accordance with its previously expressed concern about avoiding disruption of the desegregation plan in mid-year, it simply left the rollback deferral in place until the end of the school year in June 1984 in order to avoid such disruption.<sup>29</sup> The Court of Appeals' treatment of the rollback deferral issue under the particular circumstances of this case accords with the standards established by this Court and raises no issue warranting review.<sup>30</sup>

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<sup>29</sup> See *Liddell v. State of Missouri*, 717 F.2d 1180, 1183 (8th Cir. 1983) ("*Liddell VI*") (explaining that issuance of a stay after school year had begun would "necessitate reassigning students and teachers . . . and revising administrative decisions concerning budgeting, orientation and hiring," thereby disrupting "the lives of thousands of students and teachers"). *Accord*, App. B to Supplemental Brief of City Petitioners at A-3 (supplemental opinion of Court of Appeals of March 5, 1984) (describing the "consistent view" of the court "that we will avoid disruption during the school year whenever possible").

<sup>30</sup> In addition to failing to demonstrate that the decision below concerning the tax and rollback issues departs from the decisions of this Court, the City has failed to show any conflict among the circuits. *Plaquemines Parish School Bd. v. United States*, 415 F.2d 817 (5th Cir. 1969) (cited in City Pet. at 15, 23), did not even involve a tax levy. Instead, it concerned an order requiring a school district to seek funds under federal programs, and it was premised on the recognition that adequate funding for desegregation would be forthcoming pursuant to an injunction against the County Commission, which was upheld by the appellate court. *Id.* at 834. In *Evans v. Buchanan*, 582 F.2d 750, 780 (3d Cir. 1978), *cert. denied*, 446 U.S. 923 (1980) (cited in City Pet. at 11, 17, 23, 25, 29), the Third Circuit specifically endorsed the principle of *Griffin v. County School Bd.*, *supra*, that a court has authority to enter a tax order where necessary to protect a desegregation decree, such as where "substantially insufficient funds" are provided to operate a school system. Like the Eighth Circuit below, it remanded to the district

4. Petitioner Association claims that the courts below erred in approving the Settlement Agreement because the agreement allegedly favors the interests of black students who choose to transfer to county schools over the interests of those who choose to remain in City schools. Petitioner further contends that the District Court's alleged failure to give sufficient consideration to Petitioner's objections to the plan amounts to a denial of due process. These arguments were thoroughly addressed by the Eighth Circuit and do not raise any issues worthy of this Court's attention.

Petitioner's arguments totally ignore the fact that the Settlement Agreement provides for a wholly voluntary plan. The option of transferring to suburban districts is offered on an equal basis to *all* black students attending majority-black City schools. See Settlement Agreement [H(2217)83] at II(B), City App. C, p. A-69-70. The Settlement Agreement also contains substantial remedial and compensatory relief designed to improve conditions for those students who choose to remain in City schools—relief that was ordered below in order to further remedy established constitutional violations. See p. 9, 12, 19-23, *supra*.<sup>31</sup>

Thus, the Eighth Circuit concluded that there was “no evidence in the record to support the claim that the interests of students attending all-black schools are being slighted,” since they will now be able either to “attend their neighborhood school, attended an integrated school in the city or county, or attend a magnet school.” City

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court because it had not made factual findings sufficient to justify contravening the tax rate approved by the legislature.

<sup>31</sup> Petitioner's reliance on *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979), is thus misplaced. That case involved a proposed settlement in which plaintiff class members who declined to accept a cash settlement would have had their federal claims dismissed even though they received no relief in return. In contrast, in this case, substantial relief is provided to students who do not elect to transfer out of City schools.

App. K, p. A-460. The Eighth Circuit similarly rejected Petitioner's argument that due process was denied because the District Court allegedly failed to respond in detail to Petitioner's objections to the settlement plan. After careful review, the court held that the District Court's lengthy opinion "reveals that it engaged in a reasoned examination of objections raised by class members concerning whether the plan is fair, reasonable and adequate." City App. K, p. A-461 (citing *Liddell v. Board of Education*, *supra*, 567 F. Supp. at 1042-1047). Petitioner Association has failed to demonstrate that its attempt to relitigate these holdings warrants review by this Court.

5. Finally, the State claims that the decision below "wrongfully interferes with decisions about State programs" and impedes the interest of State authorities in "managing their own affairs," because it involves the expenditure of State funds which could be used for other purposes. State Pet. at 28, 30. Not surprisingly, the State can point to no decision of this Court or a federal court of appeals which supports its assertion that such budgetary or management factors are more important than the constitutional rights of thousands of schoolchildren.

The State's argument necessarily assumes that there are some federal constitutional violations which, for budgetary reasons, the courts are powerless to remedy. That is not and cannot be the law. As this Court has recognized, "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *Watson v. City of Memphis*, 373 U.S. 526, 537 (1963).<sup>32</sup> In *Milliken II*, this Court rejected vi-

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<sup>32</sup> *Accord, e.g., Welsch v. Likens*, 550 F.2d 1122, 1132 (8th Cir. 1977) (holding that the "obligation [to comply with constitutional standards] may not be permitted to yield to financial considerations"). Like the State of Michigan in *Milliken II*, the State in this case is free to determine how to finance its responsibilities under the order below. For example, the State could utilize some of its

tually the identical argument raised by the State here: it explained that a "federal court judgment enforcing the express prohibitions on unlawful State conduct" under the Fourteenth Amendment "does not jeopardize the integrity of the structure or functions of state and local government," regardless of its costs. *Milliken II*, 433 U.S. at 291.

The total lack of merit in the State's argument that it should not be ordered to fund the remedy here becomes even clearer when put into historical perspective. Until the middle of the nineteenth century, the State of Missouri outlawed the teaching of black children altogether. For almost one hundred years thereafter, the State required that blacks be educated only in segregated schools. See *Adams v. United States*, *supra*, 620 F.2d at 1280-81. Even after *Brown v. Board of Education*, 347 U.S. 483 (1954), the State took no effective action to dismantle the racially dual system in the City of St. Louis. See City App. K at p. A-408c. Even today, thirty years later, approximately half the City's students remain in one-race schools. The State cannot now claim that it has no responsibility to remedy these conditions. Compare *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958). Nor can it avoid its responsibility simply by complaining about the costs. The State's unsupported attempt to resurrect such long-discredited arguments fails to present an issue worthy of review by this Court.

### CONCLUSION

For the foregoing reasons, the Petitions for a Writ of Certiorari should be denied.

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\$2.4 billion of general, unearmarked funds for fiscal year 1984 or, as Governor Bond proposed, raise new tax revenues. See May 17 Tr. at 22 (testimony of State Budget Director Perry McGinnis); *St. Louis Post Dispatch*, Sept. 14, 1983, at 1. See also *Yaris v. Special School Dist.*, 558 F. Supp. 545, 559 n.7 (E.D. Mo. 1983), *aff'd*, No. 83-1865 (8th Cir. Feb. 24, 1984) (noting that "only one state in the country appropriates less funds than the State of Missouri for its educational system").

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

STATE OF MISSOURI, et al.,  
*Petitioners,*

vs.

CRATON LIDDELL, et al.,  
and

EARLINE CALDWELL, et al.,  
and

JANICE ADAMS, et al.,  
and

BOARD OF EDUCATION OF THE CITY OF  
ST. LOUIS, MISSOURI, et al.,  
and

THE CITY OF ST. LOUIS, MISSOURI,  
and

THE UNITED STATES OF AMERICA,  
*Respondents.*

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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NO. 83-1721-83-1386-83-1838

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STATE OF MISSOURI, ET AL.,

PETITIONERS,

VS.

CRATON LIDDELL, ET AL.,

RESPONDENTS.

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT

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SUPPLEMENTAL BRIEF FOR CRATON LIDDELL, ET AL.,  
IN OPPOSITION

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### OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, was filed February 8, 1984 as slip opinion No. 83-2140. The opinion is reprinted as Appendix A in the separate Appendix of Petitioner's Application. The opinion of the District Court is reported at 567 F.Supp. 1030. It is also reprinted as Appendix B in the separate appendix of Petitioner's Application.

### JURISDICTION

The judgment of the Court of Appeals en banc was entered on February 8, 1984. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Respondents herein, Craton Liddell, by his next friend, Minnie Liddell; JoAnna Goldsby, by her next friend, Barbara Goldsby; Deborah Yarber, by her next friend, Samuel Yarber; Nathalie Moore, by her next friend, Louise Moore, and Rachelle LeGrand, by her next friend, Lois LeGrand; members of the Con-

cerned Parents, an unincorporated association, filed this suit on behalf of themselves and all other school age children and their parents, who were similarly situated in the City of St. Louis, Missouri - February 18, 1972.

An attempt was made to settle this litigation in 1975 by the filing of a consent decree. This move was resisted by the intervention of the NAACP. This phase of the litigation is set forth in Liddell vs. Caldwell (Liddell I), 546 F.2d. 768 (1976), cert. denied, 433 U.S. 914 (1976). The NAACP representing the Caldwell plaintiffs were permitted to intervene as a class of plaintiffs. The District Court permitted the City of St. Louis and other parent groups to intervene as plaintiff - Intervenors.

Under date of July 13, 1977, the State of Missouri the State Commissioner of Education and the State Board of Education were joined as defendants by order of Judge James H. Meredith of the District Court.

The District Court ruled in its July 13, 1977



Order that all parties (intervenors and new defendants alike) are bound by the original pleadings the same as if they were original parties. Thus, if there are allegations in the original petition making a complaint against the State of Missouri and its agents School districts then the State of Missouri as a defendant is bound by those pleadings. The State's contention that no claim has been made against it would indicate that the State never read the original petition, or the plaintiff's Supplemental Pleadings. It would appear that a tactical decision "backfired" against the State.

These Respondents (the Liddell Plaintiffs) state that the original petition pleaded a cause of action against the State of Missouri and its agents.1/ The State of Missouri filed in its pleading an admission of proper party, but denied responsibility for segregation in the City of St. Louis school system. The District Court was of the opinion that the Constitutional liability of defendant City Board of Education, et al. had not been determined

or admitted. Therefore, the District Court informed all parties that the schedule hearings would determine the constitutional liability of all defendants, including the State defendants. This was necessary because of three recent Supreme Court decisions, to wit: (all decided in 1977) Dayton Bd. of Ed. vs. Brinkman, 433 U.S. 406 (1977) Milliken vs. Bradley, 433 U.S. 267 (1977) School Dist. of Omaha vs. U.S., 667, (1977).

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1/ Respondents alleged in their petition among other (L.R. App. A), "that the laws of Missouri vested the Board of Education of the City of St. Louis with general and supervising control and management of Public schools. . .Plaintiff further state that defendants, the Board of Education of the City of St. Louis and its individual members, the Superintendent and Acting Superintendent of Schools of said Board, and the District Superintendent of the districts within the Metropolitan school district of the City of St. Louis in the exercise of the functions of the state which have been delegated to them by the laws of Missouri, are required to conduct and superintend the business relating to the public schools of the City of St. Louis in a manner consistent with the requirements of the Constitution and laws of the United States, and to implement the legitimate public policy of the State of Missouri to provide, furnish, and make available equal racially non-segregated, racially non-discriminatory educational opportunities for all regardless of race, creed natural origin, color or sex, and to eliminate and prohibit segregated or separate schools or school

In deciding to hold a trial on the merits:  
the courts said in its July 13, 1977 order:

"In the light of recent Supreme Court cases: Milliken vs. Bradley, No. 76-447, decided June 27, 1977; Dayton Board of Education vs. Brinkman, No. 76-539, decided June 27, 1977; and School District of Omaha v. United States, No. 76-705, decided June 29, 1977, it is necessary for this Court to determine if there has been a constitutional violation by the defendants.

This determination has never been made by the consent decree nor the stipulation of facts; and the stipulation of facts denies any constitutional violation by defendants.

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1/ (Footnote continued)

districts on the basis of race, creed, or color; that the said defendants are further obligated to report and recommend to the legislative body of the state or of the city remedies to rid the system of the observed imperfections in the operation of the schools in their district; and that the said defendants are proper parties defendants to this action.

"That defendants and their predecessors in office in the exercise of the delegated educational functions of the State of Missouri have engaged in acts, practices, customs and usages which have had the natural, probable, foreseeable, and actual effect of incorporating into the public schools and the public school system of the metropolitan district of the City of St. Louis, the public and private residential racial segregation and discrimination practices of the State of Missouri and of the City of St. Louis in violation of the right of plaintiffs not to be segregated

All parties are bound by the stipulation of facts and the consent decree. The remedy to be adopted by the Court will depend on the nature and extent of the constitutional violation, if any. These matters will be considered by the Court at the July 25, 1977, hearing in light of the evidence introduced and the briefs of the parties."

After a 37 day trial over 6 months, the District Court found:

1. That prior to 1954 the constitution of Missouri mandated separate schools for black and white pupils.
2. This provision remained in the constitution until 1976.
3. The State Board of Education has always had constitutional and statutory authority (among other things) to supervise educational instruction.

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1/ (Footnote continued)

on the basis of race in public schools and the school districts established and maintained by defendant in the metropolitan school district of the City of St. Louis."

"Plaintiffs further states that for years prior to 1954, the State of Missouri, through its constitution and laws, the customs, policies, and practices of its instrumentalities, including but not limited to, its school districts, mandated and enforced both public and private racial segregation, including, but not limited to, public

4. The State determined Educational Policies.

5. The State of Missouri and the City of St. Louis School District had fulfilled their obligations to creat a unitary school system in

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1/ (Footnote continued)

school education, the effects of which persist in the affairs of defendants in administering the public school system of the metropolitan district of the City of St. Louis, all of which had and continues to have the purpose and effect of denying equal educational opportunities and equal opportunities based on education, to black citizens and students by compelling the attendance of black students in segregated schools, and which denies to plaintiffs and the class on whose behalf they sue, the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

"That defendants and their predecessors in office since 1954, pursuant to a policy, practice, custom and usage of racial discrimination denying Fourteenth Amendment rights, have by the devices, inter alia, of separate and racially discriminatory curriculum within the schools and school districts, frequent redistricting of school boundaries and school district boundaries, new school locations and construction, the assignment of all children to schools within the metropolitan district of the City of St. Louis, and the assignment of teachers in the school system, have acted affirmatively to create, support, maintain and continue to support and maintain a dual biracial school system in the Metropolitan School District of the City of St. Louis which denies to black children equal education opportunities; and that defendants have failed to

1955 and 1956 by the adoption of the Neighborhood School Policy in the City of St. Louis school system. Liddell v. Board of Education, City of St. Louis, et al., 469 F. Supp. 1304 (E.D. Mo. 1979); See also App. C-State's Suggested Finding of Facts and Conclusions of Law; Adams vs. U.S. 620 F 2d. 1277 (8th Circuit) en banc, cert. denied, 449 U.S. 826 (1980).

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1/ (Footnote continued)

fulfill their affirmative duty to establish and maintain unitary public schools."



On appeal, the Court of Appeals reversed the District Court and held that under the circumstances of this case, the District Court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Adams v. United States, 620, F. 2d., 277 (8th Circuit), 1980, cert. denied, 101 Sup. Ct., 88, 1980.

The Court of Appeals directed that segregation in the elementary and secondary schools in St. Louis must now be eliminated, and instructed the District Court to take necessary steps to bring about an integrated system. The City of St. Louis School Board prepared a plan for desegregating the public schools of the district. However, because of the ratio of black and white students in the system, the plan left 30,000 black students in predominantly black or all black schools in the North St. Louis area of

of the school district.

The District Court and the Eighth Circuit Court of Appeals approved the City Board's plan to desegregate the school system with Paragraphs 12a, 12b, 12c and 12d which specifically addressed the 30,000 black pupils remaining in segregated schools in North St. Louis: 12a being a voluntary plan of transferring students to County schools, 12b merged the vocational educational schools of City and County, 12c called for a mandatory plan of desegregation and 12d called for a study to determine the effects of housing on school desegregation.

Under state law, school districts are delegate agents of the state for the purpose of carrying out the state function of providing a gratuitous education for its citizens, ages six to twenty-one.<sup>2/</sup>

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<sup>2/</sup> Missouri Constitution Article IX, §(a): "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in

### QUESTIONS PRESENTED

The State of Missouri, in seeking this Court's Writ of Certiorari to the Eighth Circuit Court of Appeals, argues generally:

1. "This case involves an unprecedented order." Pet. P. 10
2. "The remedy is intolerable." Pet. P. 11

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#### 2/ (Footnote continued)

this state within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children except in cases otherwise provided for by law."

Missouri Constitution Article IX, §2(a): "The supervision of instruction in public schools shall be vested in a state board of education, consisting of eight (8) lay members appointed by the governor, by and with the advice and consent of the senate. . . ." and in §2(b) it is provided: "The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. . . ."

In State ex rel vs. Holmes, 231 S.W. 2d 185, 191 (1950), the Court made these pertinent statements: "Art. IX, Sec 1 of our Constitution says that "the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years," but it does not require the General Assembly to divide the state into school districts. The manner of their formation is not regulated by the Constitution.

3. The "quality education and rebuilding program flies in the face of holdings that the Constitution does not guarantee a right to public education at all, much less a right to "develop to the limits of (each student's) ability". . . . or to attend AAA schools." Pet. PP. 11-12

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2/ (Footnote continued)

"The fixing of boundaries of school district is a local affair which may be left to the will of the people under a general law providing for the creation of school districts throughout the state." Consolidated School District No. 41 v. Dacus., 189 Okl. 400, 117 P. 2d 508, loc. cit. 510. "No one would contend that the Legislature itself act directly in defining and changing the boundaries of each district in the state, without delegating this to local authorities. . . . ." State ex rel. School District v. Andrae, 216, Mo. 617, loc. cit. 631, 116 S.W. 561, 564.

"The Legislature has always, as a matter of policy, left to the resident voters the settlement of all questions involving the organization of school districts. The local voters act to determine such questions either through the mode of petitioned elections or by petitions to the appropriate public official or officials clothed by law with the power to annex or detach territory. The resident voters of the particular territory are the delegated agents of the Legislature to administer the enabling legislation, thereby implementing the legislative intent to obey the constitutional mandate of insuring the establishment and maintenance of free public schools for the

Footnote continued on page 16

The State then argues specifically:

1. The Order was imposed without proper findings. Pet. P. 12
2. The remedy is unrelated to any proved violation, Pet. P. 16, because it provided for:
  - a. A Multidistrict Remedy. Pet. P. 16
  - b. Unauthorized Quality Education and Rebuilding Program. Pet. P. 24
3. The Order wrongfully interfered with decisions about State Programs. Pet. P. 28

At page 16 of the States' Petition for Certiorari, the State proclaims: "There is not dispute over the **duty** to eliminate the segregation of **students**; within the St. Louis School District. What the States does dispute, and what is at issue here, is the duty to go beyond the district to achieve a racial balance unavailable within the district itself." Continuing on page 17, the State says: "Our position, simply put, is that the federal courts cannot require the State to transport students among districts in order to achieve a racial balance unavailable within the district

where the violation occurred." (Emphasis added).

We would change the emphasized phrase (racial balance) to read "remedy". With some modification of the issue as put by the State, the Liddell Plaintiffs state the question as follows:

Whether this complained of court order calling for additional relief outside the boundaries of the convicted City of St. Louis school **district** based on the **unavailability of** that **relief** within the City district and the voluntary transfer of students between segregated (all black) schools within the convicted City School District and predominantly white suburban school districts, said transfers to be paid for by the convicted State of Missouri as a primary Constitutional wrongdoer is supported on the record (including the decisions and judgments of the lower federal courts) and therefore ought not to be further reviewed by this Court.



## DISCUSSION

The complained of Court order calling for Additional Relief Outside the Boundaries of the Convicted City of St. Louis School District Based on the Unavailability of that Relief within the City District and the Voluntary Transfer of Students between Segregated (All Black) schools within the Convicted City School District and Predominantly White Suburban School Districts,

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2/ (Footnote continued)

gratuitous instruction of all persons in this state within ages not in excess of twenty-one years. People v. Deatherage, 401 Ill. 25, 81 N.E.2d. 581."

"We hold that S.B. 307 is not an illegal delegation of legislative power within the meaning of Art. II of the Constitution. The county boards of education who devise the plans for reorganization, the State Board of Education a constitutional body who must approve the plans and the voters of the district are delegated agents of the Legislature to administer this act. This act is not such an exclusive legislative function as may not be delegated to the State Board of Education county boards of education and the voters of the proposed district. Wheeler School District v. Hawley, supra; Gardner v. Ginther, supra; School District v. Callahan, supra. "This is not deemed or considered a prohibited delegation of legislative powers." State ex rel. School District v. Andrae, supra, 216 Mo. loc. cit. 630, 116 S.W. loc. cit. 564."

said transfers to be paid for by the convicted State of Missouri as a primary constitutional wrongdoer, is supported on the record (including the decisions and Judgments of the lower Federal Courts) and therefore ought not to be further reviewed by this Court.

The Liddell plaintiffs submit that the record, Judgments and decisions of the lower federal courts in this action support the relief approved against the State by the Eighth Circuit Court of Appeals and no further review by this Court is required. In support thereof, the Liddell plaintiffs state as follows:

1. The findings and conclusions of the District Court are supported by the original pleadings and the evidence, and are not contested by the State. Liddell, et al., vs. St. Louis Bd. of Education etc., 491 F. Supp. 454 (1980). See App. A- Original Petition; Appendix E, Testimony of Dr. Kottmeyer and App. G- original District Court findings on neighborhood schools; and 1st Suggested Findings and Conclusions on

Restrictive Covenants.

2. The Findings, Conclusions, and Judgments of the District Court have been consistently confirmed by the Eighth Circuit Court of Appeals. Liddell III, 667 F. 2d. 643 (8th 1981), cert. denied, 454 U.S. 1091 (1982) and Liddell IV, 693 F. 2d. 721 (1981) and Liddell V, 677 F. 2d. (1982) cert. denied, 103 Supreme Court, 172 (1982).

3. The United States Supreme Court has refused certiorari on the question of relief and funding of that relief as presented by the State on at least two prior occasions. Mo. vs. Liddell, 454 U.S. 1091 (1980); Mo. vs. Liddell, 103 S. Ct. 172 (1982).

The Liddell plaintiffs submit that this settlement agreement is based on their supplemental pleadings H(1027)82 for additional relief, by which they adopt all favorable findings, conclusions, opinions and judgments of the District Court and Court of Appeals, and therefore no further review is required. See APP. H-Liddell Plaintiff Supp. Pleadings H(1027)82.

These plaintiffs acknowledge that the Supreme Court has the authority to correct basic errors in the application of federal constitutional law and the proclamation of the law of the case doctrine is not a barrier to this court. We do not believe there is error or injustice in holding that the State of Missouri is a primary constitutional wrongdoer and therefore amenable to interdistrict relief under the doctrine of Hills vs. Gautreaux, 425 U.S. 284 (1976).

The State of Missouri and those parties aligned with it err when they ignore the original pleadings and the findings and conclusions of the District Court in 491 F. Supp. 454 (1980) even though they do not contest those findings. The District Court in 1979, after the first hearing, erroneously held in 469 F. Supp., "that resort by the City Board to a neighborhood school policy after the decision in Brown, had eliminated segregation in the City schools, "Liddell vs. Bd. of Education, 469 F. Supp. 1304 (1979); Pet. A2 However, the above quotation is consistent with

the District Court's finding that the St. Louis City Board adopted the neighborhood school policy of student assignment, at least in theory.

The Eighth Circuit, en banc, reversed and held that the neighborhood school policy had little or no effect on pre-Brown segregation or the dual school system in the City of St. Louis; and based how the neighborhoods had been constructed, the policy would reinforce segregated schools, rather than eliminate them. Adams vs. U.S., 620 F. 2d. 1277, 1287, 1291, (1980).

Further, the State in its argument ignores the illegal judicial State policy enforced by defendant State of Missouri and its officers that made the illegal neighborhoods possible. These policies included the enforcement of illegal racial restricted covenants made un-enforceable by this Court in Shelley vs. Kraemer, and made illegal by this Court in Jones vs. Mayer. See Fourteenth Amendment to the U.S. Constitution, Shelley vs. Kraemer, 68 Sup. Ct. 836 (1947); Jones vs. Mayer, 88 Sup. Ct. 2186 (1968). See also Richardson vs. Dolan, 181 S.W.

2d. 997 (1944) and cases cited therein.

The State further ignores prior approval of the so-called 12(a) voluntary plan which included suburban school district. That 12(a) plan is a part of the same District Court Judgment that is responsible for this broadened voluntary settlement agreement which was initiated in lieu of the madatory paragraph 12(c) of the Judgment. Liddell vs. Board of Education, 491 F. Supp.

351 (1980), affirmed by the Eighth Circuit Court of Appeals at 667 F. 2d. 643 (1981), cert. denied by this Court at 454 U.S. 1081, 1091 (1982).

In the State's petition for a writ where certiorari was denied in 454 U.S. 1081 the State expressly argued:

"V. The District Court exceeded its Authority and Violated Due Process in Paragraph 12(c) of its May 21, 1980 Order in which it Required the Submission of". . .a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation



in the City of St. Louis and St. Louis County  
"Because, to date, this Litigation has  
not been Interdistrict in Scope and as a  
Result no Evidence has been Introduced  
Which Would even Remotely Call for  
Submission of Such a Plan."

This Court denied certiorari to the Eighth  
Circuit Appeals Court. The State had argued  
the distinctions in the application of Hills  
vs. Gautreaux and Milliken vs. Bradley (I) cases  
on interdistrict remedies, and the affirmative  
duty requirement of Green in State of Mo. vs.  
Liddell, et al., 103 S. Ct. 172 (1982).

Further, the State's current application  
for a Writ ignores the fact that this settlement  
agreement is based on the continuing jurisdiction  
of the District Court for further relief and on  
all favorable findings, conclusions, opinions  
and judgments of the District Court and of the  
Eighth Circuit Court of Appeals in the original  
cause of action as expressed in the Liddell  
Plaintiff's original petition and the Liddell

Plaintiffs' Supplemental Pleadings. See Appendixes A and H.

We submit that the State's erroneous perception of the whole lawsuit is expressed in the following quotation from page 6 of its Petition:

"Rather, the Court undertook only to decide  
"Whether (the) proposed Settlement Plan  
is fair, reasonable, and adequate for the  
resolution of the 12(c) interdistrict phase  
of the case." Pet. App. 103a

The above quotation from the State's Petition is a part of the opening sentence of the District Court's Memorandum opinion and is misquoted out of context to support the State's cause. The District Court at page 108 of its opinion states elements of its considerations for satisfying the requirements of Federal Rule of Civil Procedure 23(d). Pet. App. B (108a).

These plaintiffs disagree with the District Court's decision of this Agreement as the settlement of an independent lawsuit to determine the liability of all defendants, including the State of Missouri.

These plaintiffs would not and do not relitigate the liability of the State defendants but would seek to determine the degree of culpability of the suburban school districts as they participated in or enforced the segregation laws of the State of Missouri. Further, we submit that any remedial determination does not require the relitigation of the liability of the City of St. Louis District or the State of Missouri. Their liability is fixed by the District Court and the Eighth Circuit Court of Appeals and this Court's denial of Certiorari. Further, these plaintiffs submit that the whole record supports their position that this settlement agreement is designed to eradicate the vestiges of a state mandated racially dual educational systems and establish a unitary system in the statutory St. Louis metropolitan school district. L.R. App. I

It should be noted that in Missouri, public education is made the responsibility of the State legislative authority- the General Assembly, and all persons or bodies exercising any of the

public education authority do so as delegate agents of the State of Missouri. These include school districts and district constituents, even when voting on matters that may be called local by the State. Holmes, supra.

The Missouri State Constitution makes public school education the responsibility of the state general assembly. Within the realm of legal delegation of power, the legislature delegates certain of its authority to school districts to administer those facets of the education program or machinery that may vary from district to district and therefore need local flavoring; such as teacher employment, student assignments, school boundaries, building construction and maintenance, extracurricula programs, public use of buildings, etc.

The creation of every school district in suburbia, and the State of Missouri, was done pursuant to state legislation in Chapter 162 R.S. Mo. 1968.

The State of Missouri argues in its petition

for a Writ on page 26: "This Court has held on several occasions that students have no right to public education at all." (citations omitted) "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." These abstract statements are misleading and demonstrate the callous approach that Missouri takes to the equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. It is elementary that education is a power reserved to the states and they (the states) may or may not afford public education. But, if the State does afford public education, it cannot discriminate based on race contrary to the Fourteenth Amendment, or laws enacted pursuant thereto.

On page 28, note 26 of the Petition, the State of Missouri makes an unbelievable statement: "While the State is willing to compensate for any deficiencies caused by its prior policies, there has been no showing that students now in

"non-integrated schools" have been put at an educational disadvantage because of the earlier state law."

The State of Missouri does not have clean hands. Every current non-integrated school was non-integrated in 1954 by state legislative mandate, or judicially made possible by the enforcement of racial restrictive covenant protecting white neighborhoods from blacks renting or buying therein. See and compare also the State's Suggested Findings of Facts which were adopted verbatim by the District Court in its findings of facts. App. C and App. G.

The State argues that the State of Missouri cannot be derivatively liable as the governmental principal of the delegate agents school districts in their constitutional conduct toward the plaintiff class. This is not our contention.

Our contention is that the school districts derive their constitutional viability and liability from their status as delegate agents of the State of Missouri which has been found judicially to



be a constitutional (liable) wrongdoer for creating, mandating and maintaining a racially dual school system.

See Milliken vs. Bradley I where the U.S. Supreme Ct. rejected derivative liability of the state emanating from the district, the creature of the State.

We propose derivative liability of the district (the creature) emanating from the State, the creator and principal of the district, the delegate agent.

The State of Missouri participated very vigorously in the liability hearings. The State cross-examined witnesses and filed post-hearing suggested findings of Facts, Conclusions of law, and Order. It appears that it was the State's suggested findings of facts that partially influenced the District Court in making its findings of facts in 469 F. Supp. (Compare L.R. App. C with 469 F. Supp. 1.c. Slip Opinion Pg. 11.)

Later, the State called witnesses in its behalf, filed other pleadings and fully partici-

pated, but never read the original Complaint or the Supplemental Complaint of the Liddell plaintiffs.

The State of Missouri was not adversely affected by the scheduled July 25, 1877 hearing as it was continued by the District Court to October, so that the State of Missouri could get ready for trial. See Slip Opinion, Pg. 7: "Findings of Facts" where it is stated:

"By order of July 14, 1977, the trial date was postponed to October 17, 1977, in order to permit the State defendants to prepare for trial."

Further, it is difficult to understand the sincerity of the State's and the City's position on the authority of the District Court to enter orders affecting the school district's tax levy, especially, in light of the fact that the State of Missouri was the first to suggest that the District Court should issue an order requiring the St. Louis City School District to increase its levy to cover its share of the desegregation costs. See Paragraph 7 of the State's Conclusions, Pre-Hearing Brief of 469 F. Supp.

The Association seems to argue that black children can not learn effectively in a school of all black students. We disagree, providing that the City Board does not isolate the all black schools from the remainder of the system thereby destroying the unitary school system. The physical facilities, the curriculum programs, and the dedication of the teachers and administrators along with the reduction of classroom sizes to a manageable level, motivated students and parents and discipline can produce a learning atmosphere throughout the system regardless of which race is in the majority. This is what is sought for the children in North St. Louis, and for the entire school system.

It is important to point out that these past pleadings and the evidence previously adduced are not included here for purposes of relitigation of issues already decided favorably to these plaintiffs; but to demonstrate that the State of Missouri had acknowledge of the claims made against it; that it had an opportunity to (and

did) participate fully in the proceedings where the State of Missouri was found to be a constitutional wrongdoer along with the City of St. Louis School District; that the State (when it chose to do so) called witnesses in its behalf at trial and deposition; that the State was at all times ably represented by very competent counsel, and is not the victim of a denial of due process.

CONCLUSION

The Liddell Plaintiffs respectfully submit that for the combined reasons stated in this Supplemental Response and in the joint Response, of the Proponents St. Louis Board of Education, the Liddell and Caldwell plaintiffs, the Application by defendant State of Missouri for the Writ of Certiorari to the Eighth Circuit Court of Appeals should be denied as no further review is necessary.

Respectfully submitted,

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July 31, 1984





No. 83-1721

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

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STATE OF MISSOURI, *et al.*,  
*Petitioners,*

v.

CRATON LIDDELL, *et al.*,  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

---

**REPLY BRIEF FOR PETITIONERS**

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# TABLE OF AUTHORITIES

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

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No. 83-1721

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STATE OF MISSOURI, *et al.*,  
v. *Petitioners*,  
CRATON LIDDELL, *et al.*,  
*Respondents*.

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

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**REPLY BRIEF FOR PETITIONERS**

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The opposing briefs filed by respondents rest upon a simple, but faulty, syllogism. The basic premises are, first, that the State committed a constitutional violation by requiring segregated schools in St. Louis until 1954 and, second, that the St. Louis schools currently have a high ratio of black to white students and are in need of new programs and school buildings. Thus, conclude respondents, the federal courts can order the State to fund a multi-district busing plan to achieve greater racial balance than the St. Louis school district affords, guarantee the City "AAA-rated" schools, and share equally any building programs chosen by the St. Louis school board. Significantly, respondents reach this conclusion even though neither court below made any inquiry into whether, much less findings that, the racial mix in the district as a whole or any substandard conditions have been caused by the constitutional violation.

This position, quite apart from its dependence on abstraction, has several flaws. First, respondents are simply wrong when they say that *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), does not require findings of causation (or "incremental effect") in this case and wrong again when they question the basic equitable principles set forth in *Milliken v. Bradley*, 433 U.S. 263 (1977) (*Milliken II*). The decisions in *Dayton I* and *Milliken II* plainly establish that equitable relief, if it is to be remedial rather than punitive, must rest upon findings that distinguish conditions caused by constitutional violations from conditions that would have existed anyway. See pages 3-5, *infra*. Second, nothing in the Constitution requires the State to pay for interdistrict busing, even with the consent of the districts involved, to remedy the fact that a fully integrated school system in St. Louis will nonetheless be 80 per cent black. The plaintiffs have no right to any set proportion of black and white students in their home school district, *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*), and nothing in the case demonstrates that the population of the district as a whole was affected by unlawful state action. See pages 5-7, *infra*. Similarly, plaintiffs have no right to "AAA-rated" schools or new school buildings, conditions which are absent from many school systems throughout Missouri and, indeed, the entire Nation. See pages 7-8, *infra*.<sup>1</sup> The imposition of this costly order, based on little more than the wishes of the other parties, has thus "worked a serious injustice against the State." Brief for the United States at 19.<sup>2</sup>

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<sup>1</sup> We also address respondents' contention that the Court has passed on these issues on earlier petitions for certiorari. See pages 8-10, *infra*.

<sup>2</sup> Respondents seek to deflate the cost of the remedy by using figures from last year (when much of the plan was not in effect) and by excluding the costs of the interdistrict transfer plan and

1. Addressing our argument that *Dayton I* requires findings of causation in this case, respondents (like the court of appeals) take the position that "the holding in *Dayton I* is limited to situations where 'only a few apparently isolated discriminatory practices have been found.'" Respondents' Brief at 23. That contention is a misreading of *Dayton I*.

The decision in *Dayton I*, far from being a narrow exception to normal equitable principles, is essentially a recognition that those principles, to be meaningful, must rest upon proper findings. The Court in *Dayton I* reviewed the applicable case law in detail, emphasizing the basic doctrine that, even after a constitutional violation has been identified, "a federal court is required to tailor 'the scope of the remedy' to 'fit the nature and extent of the constitutional violation.'" *Id.* at 420, quoting *Milliken I*, *supra*, 418 U.S. at 744; see also *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971). The Court then went on to point out, however, that the extent of any violation necessarily depends upon findings about its "incremental effect," *i.e.*, the difference between the situation as it is and as "it would have been in the absence of such constitutional violations." 433 U.S. at 420. The requirement of a fit between the violation and the remedy, in turn, means that "[t]he remedy must be designed to redress that difference \* \* \*." *Ibid.* See *Berry v. School District of City of Benton Harbor*, 698 F.2d 813, 819 (6th Cir. 1983).

Although respondents suggest that the Court somehow backed away from these principles in *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979), Respondents' Br. at 23, that suggestion is unpersuasive. First of all, the importance of proper findings was, if anything, un-

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the capital improvement plan, two of the three major components. Respondents' Br. at 13-14 & n.14. We note that the estimate of State costs in fiscal 1985 alone is in the range of \$50 million—not including \$63.5 million sought from the State for capital improvements.



derscored by the decision in *Columbus*, where the Court distinguished *Dayton I* on the basis of findings that the *Columbus* defendants' "purposefully discriminatory policies had current, systemwide impact." The Court then stated flatly that such findings were "an essential predicate \* \* \* for a systemwide remedy." 443 U.S. at 466 n.15. Taken in that light, of course, *Columbus* stands for precisely the proposition that we are advancing here: that a broad remedy must rest upon findings of equally broad continuing effects from the constitutional violation.<sup>3</sup> In any event, nothing in *Columbus* compels the illogical conclusion that the courts must identify the current impact of isolated violations, but not of widespread ones. It would seem self-evident that a remedy cannot be tailored to the effects of a violation unless a court first determines what those effects are.

Relying on an antitrust case, *Ford Motor Co. v. United States*, 405 U.S. 562 (1972), respondents also insist that "the courts are not limited \* \* \* to a fanciful and futile effort to try to recreate 'things as they would have been.'" Respondents' Br. at 22. With this contention, however, they run afoul not only of *Dayton I* but of *Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*). In *Milliken II* the Court stated unequivocally that an equitable decree "must indeed be remedial in nature, that is, it must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Id.* at 280, quoting *Milliken I*, *supra*, 418 U.S. at 746 (emphasis in original). See also *Oliver v. Kalamazoo Board of Education*, 706 F.2d 757 (6th Cir. 1983). While no one disputes that such an inquiry often may

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<sup>3</sup> In this case, by contrast, the court required the State to pay for an interdistrict busing plan involving more than 20 suburban districts even though there are no findings that the pre-1954 policy has anything more than an intradistrict impact. See also *Milliken I*, *supra*, 418 U.S. at 744-45.

involve difficult factual assessments, "that is what the Constitution and our cases call for, and that is what must be done \* \* \*." *Dayton I, supra*, 433 U.S. at 420.<sup>4</sup>

2. The inequities caused by a lack of findings are fully evident in this case. For, although the absence of findings itself makes analysis more difficult, various observations by the court of appeals (and now by respondents) indicate that the remedy rests on a serious misapprehension either of the rights at issue or the scope of equitable powers.

a. *The Multidistrict Remedy.* While respondents contend that the busing provisions are required to eliminate "one race schools" within St. Louis, Respondents' Br. at 16, 20, that general statement obscures two carefully neglected facts: that 80 per cent of the district students are black and that an intradistrict plan has already integrated black and white students in St. Louis as much as possible. Yet, both facts are essential to an understanding of the busing order. For, despite respondents' current silence on the subject, the court of appeals made clear that it was approving the interdistrict busing order for "an intradistrict violation" because even a fully integrated St. Louis school district would have an 80/20 black-to-white student ratio and because white students might leave the system under such conditions. Pet. App. 32a. In our view, this insistence on more than a unitary school system exceeds the power of a federal court.<sup>5</sup>

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<sup>4</sup> The inquiry, while perhaps difficult, is hardly uncommon. Federal courts frequently have to determine whether current conditions result from governmental action or from other constitutionally neutral factors in order to determine whether particular patterns of student attendance are unconstitutional in the first place. See, e.g., *Keyes v. School District No. 1*, 413 U.S. 189 (1973).

<sup>5</sup> Contrary to respondents' suggestion, Respondents' Br. at 19, we are not contesting the sole factual finding made regarding state liability, i.e., that the separation of students *within* St. Louis in 1980 was a vestige of the pre-1954 policy. Rather, we are saying that such a finding supports an intradistrict order to assure a

Although it would be hard to tell from respondents' briefs, this Court has made clear that the right at issue here is not a right to attend schools with a desired degree of integration but to attend a unitary school system in the plaintiffs' own district. *Milliken I*, *supra*, 418 U.S. at 746. Since the remedy for unlawful segregation is to restore this right, the Court has also said that the obligation of a defendant state or school board, having once maintained a dual program, is to "effectuate a transition to a racially nondiscriminatory school system." *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 458. Given these well-established principles, we disagree with the court of appeals that, once an intradistrict plan had been imposed to achieve a "racially nondiscriminatory school system," the district court had further power to go outside the system on the ground that more integration than is afforded by the City school population could be achieved by incorporating suburban schools. Even though some unitary school systems will have a high percentage of white students and others (like St. Louis) a high percentage of black students, and such systems may even exist side by side, this Court has never taken the position that the States, as a constitutional duty, must combine such systems or finance transfers among systems to offset disparities in population. There is a marked difference between eliminating discrimination root and branch, *Green v. County School Board*, 391 U.S. 430, 438 (1968), and endorsing, directly or indirectly, a "substantive constitutional right [to a] particular degree of racial balance or mixing." *Milliken II*, *supra*, 433 U.S. at 280 n.14.

Notwithstanding these principles, respondents read *Hills v. Gautreaux*, 425 U.S. 284 (1976), to hold that a court may disregard district lines to remedy prior segregation. Respondents' Br. at 18. But, whatever merit

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unitary school system but not an interdistrict order to achieve greater racial balance than the unitary system will afford.

that reading might have in a different case, it misses an essential distinction between this case and *Hills*. In *Hills*, the Court regarded the Chicago metropolitan area as the relevant geographical area for housing because it was plain that, in the absence of a violation, the plaintiffs would have had access to housing throughout that area. *Id.* at 299-300. In this case, however, the relevant geographical area for St. Louis students is limited to the City itself because, even in the absence of a violation, they still would have gone only to City schools. Thus, while *Hills* stands for the proposition that courts need not always stop at boundary lines in their efforts to restore plaintiffs to the position they otherwise would have occupied, it does not mean that they may put plaintiffs, at state expense, in positions they would *not* have occupied, solely to achieve a racial mix unavailable in the district where they live. Indeed, *Milliken II* emphasized the basic limits on equitable power in the Term after *Hills* was decided. See page 4, *supra*.

b. *The Quality Education and Rebuilding Programs.* The court of appeals, in approving much of the quality education and rebuilding programs, indicated its view that schools should have "AAA status" and "a constitutionally acceptable level" of facilities. It says much about the merits of these standards that respondents not only do not defend them, they do not even mention them. Instead, they rest on vague assertions that these "compensatory programs" are necessary to eradicate the "vestiges" of segregation. E.g., Respondents' Br. at 20, 22. Even by its own terms, however, that argument is incorrect.

To begin with, at the risk of belaboring the point, neither court below has ever given any indication that the policy of student assignment affected the level of education in St. Louis as a whole or, indeed, in any particular

schools. Moreover, were they to try and do so, they would be met by two irrefutable facts of record. The first is that the supposedly inferior St. Louis schools have a AAA rating even though many other school districts in Missouri do not. The second is that St. Louis schools had a AAA rating in 1954, when the policy of segregation was declared unlawful, and have continued to have a AAA rating for most of the thirty years since. It would thus appear incredible to claim that a temporary loss of AAA status in 1983 was causally related to the *de jure* school policy relied on so heavily by respondents.

The building program rests, if possible, on even less stable footing. Even if one indulges the assumption that *de jure* segregation had some effect on the buildings themselves,<sup>6</sup> the order here is tailored, not to the effects of any such violation, but solely to the appetite of the City Board and City voters.<sup>7</sup> To make matters worse, as Judge Gibson pointed out, Pet. App. 84a, the patent cause of any disrepair in the City schools is the failure of City voters to approve bond issues for renovation. The purpose of this program, thus, is not to redress discrimination but to get the State to pay for what the City voters would not.

3. Respondents correctly point out that this Court has declined to review earlier orders in this case. But even aside from the fact that such denials are not deemed to be decisions on the merits, see *United States v. Carver*,

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<sup>6</sup> The assumption, in fact, is untenable. While respondents seek to convey the impression that schools with the highest percentage of black students have the poorest buildings, the reverse is true. See Pet. App. 193a-194a.

<sup>7</sup> The district court ordered that "[a]ny amount raised for capital expenditures by the City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri." Pet. App. 97a (emphasis added).



260 U.S. 482, 490 (1923), those actions have little to do with the case in its present posture.<sup>8</sup>

First, it is obvious that we are dealing with a very different order. Not only are the financial consequences larger by a factor of ten or more, the order now involves a greatly expanded busing plan, for the express purpose of changing the racial mix in the St. Louis metropolitan area, as well as wholly new provisions dealing with quality education and capital improvements. At the same time, the order was reached by a new and extraordinary method, having been drafted by respondents as the settlement of a recently-filed interdistrict lawsuit, reviewed only at a Rule 23 hearing to determine its fairness to the plaintiffs, and then imposed without findings by a district judge who expressly renounced his power to modify it. This process alone calls for heightened scrutiny.

This scrutiny is made all the more important by the review given by the court of appeals. The court, sitting *en banc*, not only declined to require proper findings, as we think essential under *Dayton I*, but also, for the first time, brought to light previously hidden standards for improving racial balance, AAA schools, and the like. As the dissenting judges pointed out, Pet. App. 73a-94a, this transfer of State funds to a single school district was carried out with only the most cursory attention to the procedural and substantive standards set forth by this Court. The issues are thus both more complex and far sharper at this point.

The issues are also of considerable significance. It is by now well-established, of course, that the Constitution does not require governments to eradicate all differences between their citizens. See, e.g., *Harris v. McRae*, 448

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<sup>8</sup> We note that respondents opposed an earlier petition on the ground that it was "premature." Brief in Opposition of Respondents Board of Education of the City of St. Louis, et al., No. 80-2152, at 10-12.



U.S. 297 (1980) (no obligation to subsidize right to abortion). But the task of identifying conditions that may be judicially redressed is an exceptionally delicate one. This Court has provided some limits in this area by holding that plaintiffs must prove purposeful state action. See *Washington v. Davis*, 426 U.S. 229 (1976); *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979). Yet, unless the courts also are required to identify a causal link between state action and the condition to be redressed, they will remain free, as in this case, to compel remedies for conditions that not only have no origin in purposeful state action but have no origin in state action at all. That result is an inexcusable extension of judicial power.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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